Chapter 18

Board of Review and Assessment Appeals

Wisconsin Act 237 passed in 1998, significantly changed the Board of Review (BOR) process. The revised process will be effective for the 2000 BOR sessions. The property owner's right to appeal an assessment is a constitutional right. Article I, Section 9 of the Wisconsin Constitution declares that "every person is entitled to a certain remedy in the laws. He ought to obtain justice freely without being obliged to purchase it, promptly and without delay, conformably to the laws." In compliance with this, Wisconsin Statutes provide for a local BOR to consider and decide upon all protests against assessments. As constituted under law, the BOR amounts to a quasi-judicial body charged with the duty of correcting errors in the assessments.

The BOR is responsible for raising or lowering any assessments proven incorrect as well as correcting any errors in the roll. It is important to note that the BOR's function is not one of valuation, but of deciding on the validity of the facts presented before it. The BOR is bound to accept the assessor's assessment as correct unless there is competent testimony, uncontradicted by other evidence which proves the assessment to be incorrect. *It cannot be stressed too strongly that the BOR is not an assessing body, but a quasi-judicial body whose duty it is to hear sworn, oral testimony regarding assessed values. Based only on that testimony, the BOR must decide whether an individual has proven the assessor's assessment incorrect.*

The BOR is the first step in the formal appeal process for an individual property owner who protests an assessment. The property owner cannot pursue subsequent avenues of appeal for an individual assessment unless a formal objection has first been made to the BOR.

The following is meant to provide a picture of the BOR creation, formation, functions, duties, and limitations, as well as the role of the assessor and property owner in relation to BOR proceedings. Because of the important part played by the BOR members, clerk, assessor, and property owners in the appeal process, the duties of each are outlined separately in this chapter.

Note: In 2007, the Legislature passed Act 86 which became effective January 1, 2008. In part, this bill gave municipalities the option of passing a local ordinance giving property owners the option of requesting a 60 day extension for the BOR hearing. In communities adopting the ordinance, the BOR is required to grant a 60 day extension to property owners who request it and who pay the $100 fee at the time of filing an assessment objection. The property owners in communities adopting the extension ordinance lose the right to appeal the assessment in circuit court under sec. 74.37, Wis. Stats. The rights and responsibilities of the parties for communities adopting a 60 day extension ordinance are detailed in a memo from the Department of Revenue (DOR) dated April 9, 2008 and clarified April 10, 2008.

On February 19, 2009 Milwaukee Circuit Court found the 60 day extension granted by Act 86 to be unconstitutional because property owners living in municipalities that adopted the ordinance were denied access to the circuit courts for appeal purposes under sec. 74.35, Wis.

Stats. The court ruled that this results in unequal treatment of property owners, thus violating the principles of uniformity in taxation which is one of the fundamental rights granted by the state constitution.

On March 25, 2011 the Supreme Court of Wisconsin concluded that the treatment taxpayers in opt out municipalities receive under Act 86 is significantly different than the treatment all other taxpayers receive, and that this difference in treatment lacks a rational basis. Accordingly, they reversed the Court of Appeals and held that all of Act 86's modifications to secs. 70.47, 73.03 and 74.37, Wis. Stats., are unconstitutional.

Board of Review Members

Members, Organization

Except as provided in sub (1m) and sec. 70.99, Wis. Stats., the supervisors and clerk of each town; the mayor, clerk and such other officers, other than assessors, as the common council of each city by ordinance determines, and the president, clerk and such other officers, other than the assessor, as the Board of Trustees of each village by ordinance determines, shall constitute a BOR or the town, city, or village. 70.46(1)

1. In cities of the 1st class the BOR shall by ordinance in lieu of the foregoing consist of 5 to 9 residents of the city, none of whom may occupy any public office or be publicly employed. The members shall be appointed by the mayor of the city with the approval of the common council and shall hold office as members of the BOR for staggered five year terms. 70.46(1)

2. Subject to sub. (1m), in all other towns, cities, and villages the BOR may by ordinance in lieu of the foregoing consist of any number of town, city, or village residents and may include public officers and public employees. The ordinance shall specify the manner of appointment. 70.46(1)

3. Whenever the duties of assessor are performed by one of the officers named to the BOR by sub. (1) the governing body shall by ordinance designate another officer to serve on the BOR instead of the officer who performs the duties of assessor. 70.46(1a)

4. A person who is appointed to the office of town clerk, town treasurer or to the combined office of town clerk and town treasurer under sec. 60.30 (1e), Wis. Stats., may not serve on the BOR under sub. (1) 70.46(1m)(a)

    a. If a town BOR under sub. (1) has as a member a person who held the elective office of town clerk, town treasurer or the combined office of town clerk and town treasurer, and the town

appoints a person to hold one or more of these offices under sec. 60.30 (1e), Wis. Stats., the town Board shall fill the seat of the BOR formerly held by an elective office holder by an elector of the town. 70.46(1m)(b)

5. The town, city, or village clerk on such BOR, and in cities of the first class the commissioner of assessments on such BOR or any person on the commissioner's staff designated by the commissioner shall be the clerk thereof and keep an accurate record of all its proceedings. 70.46(2)

6. The members of the BOR, except members who are full-time employees or officers of the town, village, or city, shall receive compensation as shall be fixed by resolution or ordinance of the town board, village board, or common council. 70.46(3)

7. In order to have a legal BOR there must be at least one voting member who, within 2 years of the BOR's first meeting, has attended a training session under sec. 73.03(55), Wis. Stats., and unless that member is the municipality's chief executive officer or that officer's designee. The municipal clerk shall provide an affidavit to the DOR stating whether the requirement under this subsection has been fulfilled. **NOTE**: This section requires one member of the BOR to attend training. If the trained individual is recused or removed, the meeting may still be held. Although the statutes require only one voting member be trained, the DOR is recommending that all members of the BOR attend the training. 70.46(4)

8. Except in a first or second class city a member shall be removed under any of the circumstances described below: 70.479(6m)

   a. If a member has a conflict of interest under an ordinance of the municipality in regard to the objection.

   b. If a member has a bias and if the party requests the removal of a member for a bias. The party must submit with this request an affidavit stating that he or she believes the member has a personal bias or prejudice against the party and stating the nature of the bias or prejudice.

   c. A member who would violate sec. 19.59, Wis. Stats., (code of ethics of local officials) by hearing an objection shall recuse (disqualify) himself or herself from that hearing. The municipal clerk shall file an affidavit to the DOR declaring whether the recusal requirement is fulfilled.

   d. A member removed or recused may be replaced by the BOR, or not, as long as no fewer than three members hear the objection.

The person objecting may request removal of one member of the BOR under sec. 70.47 (6m)1, Wis. Stats.

Quorum Requisites

1. The majority shall constitute a quorum except that two members may hold any hearings of the evidence required to be held by such BOR under secs. 70.47(8) and (10), Wis. Stats., if the requirements of secs. 70.47(9)(a) and (9)(b), Wis. Stats., as follows, are met. 70.47(1)

2. A majority of the members of the BOR present at the meeting to make determination on an objection shall constitute a quorum for purposes of making the determination, and a majority vote of the quorum shall constitute the determination. In the event there is a tie vote, the assessor's valuation shall be sustained. 70.47(9)(a)

   A BOR member may not be counted in determining a quorum and may not vote concerning any determination unless, concerning such determination, the member: 70.47(9)(b)

   a. Attended the hearing of evidence; or

   b. Received a transcript of the hearing no less than 5 days prior to the meeting and read the transcript; or

   c. Received a mechanical recording of the evidence no less than 5 days prior to the meeting and listened to the recording; or

   d. Received a copy of a summary and all exceptions thereto no less than 5 days prior to the meeting and read the summary and exceptions. A "summary" means a written summary of the evidence prepared by one or more BOR members attending the hearing of evidence, which summary shall be distributed to all BOR members and all parties to the contested assessment and "exceptions" means written exceptions to the summary of evidence filed by parties to the contested assessment.

Board of Review Sessions

1. The BOR shall meet annually at any time during the 30-day period beginning on the 2nd Monday of May. In towns and villages the BOR shall meet at the town or village hall or some place designated by the Town or Village Board. If there is no such hall, it shall meet at the clerk's office, or in towns at the place where the last annual town meeting was held. In cities the BOR shall meet at the council chamber or some place designated by the council and in cities of the 1st class in some place designated by the commissioner of assessments of such cities. 70.47(1)

2. All meetings of the BOR shall be publicly held and open to all citizens at all times. No formal action of any kind shall be introduced, deliberated upon, or adopted at any closed sessions or meetings of a BOR. 70.47(2m)

3. No BOR may be constituted unless it includes at least one voting member who, within 2 years of the BOR's first meeting, has attended a training session under sec. 73.03(54), Wis. Stats., and unless that member is the municipality's chief executive officer or that officer's designee. The municipal clerk shall provide an affidavit to the DOR stating whether the requirement under this subsection has been fulfilled. 70.47(4)

4. The chairman and preferably a vice-chairman need to be selected during the first meeting of the BOR. The chairman of the BOR conducts the meeting, not the assessor, expert help, or a member of the DOR.

The chairman should run a controlled meeting. Property owners presenting objections to the BOR should be restricted to talking about matters directly related to the appeal of their assessment. Testimony which does not have any bearing on the complaint should not be allowed.

5. At its first meeting, the BOR:

   a. Shall receive the assessment roll and sworn statements from the clerk.

   b. Shall be in session at least 2 hours for taxpayers to appear and examine the assessment roll and other assessment data.

   c. Shall schedule for hearing each written objection that it received during the first 2 hours of the meeting or that it received prior to the first meeting.

   d. Shall grant a waiver of the 48-hour notice of intent to file a written or oral objection if a property owner who does not meet the notice requirement appears before the BOR during the first 2 hours of the meeting, shows good cause for failure to meet the 48-hour notice requirement and files a written objection.

   e. May hear any written objections if the BOR gave notice of the hearing to the property owner and the assessor at least 48 hours before the beginning of the scheduled meeting or if both the property owner and the assessor waive the 48-hour notice requirement. 70.47(4)

f. The assessor shall be present at the first meeting of the BOR. 70.47(3)(ag)

g. For each properly filed written objection that the BOR receives and schedules during its first meeting, but does not hear at the first meeting, the BOR shall notify each objector and the assessor, at least 48 hours before an objection is to be heard, of the time of the hearing. If during any meeting, the BOR determines that it cannot hear some of the written objections at the time scheduled it shall create a new schedule and shall notify each objector who has been rescheduled, at least 48 hours before the objection is to be heard, of the new time of the hearing.

h. If an objector fails to provide written or oral notice of an intent to object 48 hours before the first scheduled meeting, fails to request a waiver of the notice requirement under sec. 70.47(3) par. (a)4., Wis. Stats., appears before the BOR at any time up to the end of the 5th day of the session or up to the end of the final day of the session if the session is less than 5 days, files a written objection and provides evidence of extraordinary circumstances; the BOR may waive all notice requirements and hear the objection. (Extraordinary circumstances are determined on an individual case basis by the BOR.)

i. If the assessment roll is not completed at the time of the first meeting, the BOR shall adjourn for the time necessary to complete the roll, and shall post a written notice on the outer door of the place of meeting stating the time to which the meeting is adjourned.

Duties of the Board of Review

1. The BOR shall correct in the assessment roll all errors in description and computation. 70.47(6)

2. The roll shall be checked for omitted property and for double assessments. Omitted property shall be placed on the roll and the owner notified. 70.47(6) &70.47(10)

3. The BOR members are not to do over the work of the assessor and members cannot substitute their judgment or idea of value for the assessor's.

In *State v. Williams, 160 Wis. 648 (1915)* the court said, "The Board of Review is not an assessing body and it is not to do over the work of the assessor or substitute its judgment for his." However, the elements of value which are proper for the BOR to consider (if they are properly introduced as evidence) are exactly the same as those which the

assessor should consider. In this case, the court set aside an assessment made by the BOR after the BOR had made a personal viewing of the property.

4. Persons who own land and improvements to that land may object to the aggregate valuation of that land and improvements to that land. Only owners of property under objection (or their agent) can be heard by the BOR. 70.47(a) & 70.47(16)(a)

In *Stebbins v. City of Milwaukee Board of Review, Wisconsin Circuit Court, Milwaukee County, Docket No. 93-cv-18108, January 24, 1996*, the court ruled that if a taxpayer does not own the property under objection by the deadline for filing objections, the BOR may determine that this fact alone is not "good cause" and decline to hear the objection.

5. Upon receipt of an objection, the BOR shall establish a time for hearing the objection. At least 48 hours notice of the time of hearing must be given to the objector and to the assessor. Where all parties are present and waive such notice in the minutes, the hearing may be held immediately. 70.47(3)(a)5

In *State ex rel. Baker Mfg. Co. v. City of Evansville (1952) 261 Wis. 599*, the court held that where the meeting of the city BOR to consider a property owner's objection to an assessment was held on 10 hours notice instead of the statutory 48 hour notice, and was not attended by the property owner or the property owner's attorney, the meeting had no legal standing and testimony taken could not support an assessment of the property.

6. Property owners who wish to protest their assessments are required to file their objections in written form upon blanks prescribed by the DOR . This form can be waived by express action of the BOR; however, it is recommended by the DOR that the form be used. 70.47(7)(a)

No person shall be allowed in any action or proceedings to question the amount or valuation of property unless such written objection has been filed and such person in good faith presented evidence to such BOR in support of such objections and made full disclosure before said BOR, under oath of all of that person's property liable to assessment in such district and the value thereof.

NOTE: After the first meeting of the BOR and before the BOR's final adjournment, an objector may not contact a BOR member about the objection and may not provide information to a BOR member about the objection, except at a session of the BOR. 70.47(7)(ac)

7. No person may appear before the BOR, testify to the BOR by telephone or contest the amount of any assessment unless, at least 48 hours before the first meeting of the BOR or at least 48 hours before the objection is heard if the objection is allowed under sub.(3)(a), that person provides to the clerk of the BOR notice as to whether the person will ask for removal under sub. (6m)(a) and if so which member will be removed and the person's reasonable estimate of the length of time that hearing will take. (The removal provision in sub. (6m)(a) does not apply to first and second class cities.) 70.47(7)(ad)

8. When appearing before the BOR, the person shall specify, in writing, the person's estimate of the value of the land and of the improvements that are the subject of the person's objection and specify the information that the person used to arrive at that estimate. (Sample personal property and real estate objection forms approved by the DOR are found at the end of this section.) 70.47(7)(ae)

9. The BOR may not hear an objection to the amount or valuation of property unless, at least 48 hours before the BOR's first scheduled meeting, the objector provides to the BOR's clerk written or oral notice of an intent to file an objection, except that, upon showing good cause and the submission of a written objection, the BOR shall waive that requirement during the first 2 hours of the BOR's first scheduled meeting, and the BOR may waive that requirement up to the end of the 5th day of the session or up to the end of the final day of the session if the session is less than 5 days with proof of extraordinary circumstances for failure to meet the 48-hour notice requirement and failure to appear before the BOR during the first 2 hours of the first scheduled meeting. 70.47(7)(a)

10. No person shall be allowed to appear before the BOR, or to contest the amount of any assessment of real or personal property if they have refused a reasonable written request by certified mail of the assessor to view the property. 70.47(7)(aa)

11. A person who fails, neglects, or refuses to make and file the return of personal property shall be denied any right of abatement by the BOR of the assessment of such personal property unless the person shall make the return to the BOR, together with a statement of the reasons for failing to file the return in the manner and form required. 70.35(4)

Board of Review Hearing

1. The BOR shall hear under oath, all persons who appear before it and, by telephone, all ill or disabled persons who present to the

BOR a letter from a physician, surgeon, or osteopath that confirms their illness or disability. The hearing shall proceed as follows: 70.47(8)

a. The clerk shall swear all persons testifying before it in relation to the assessment. 70.47(8)(a)

b. The owner, or the owner's representatives and witnesses, shall be heard first. 70.47(8)(b)

c. The BOR may examine under oath, such persons as it believes have knowledge of the value of the property being appealed. 70.47(8)(c)

d. The BOR may, and upon request of either the assessor or the objector shall compel the attendance of witnesses, except objectors who may testify by telephone, and production of all books, inventories, appraisals, documents, and other data which may throw light upon the value of the property. 70.47(8)(d)

e. All proceedings shall be taken in full by a stenographer or recording device, the expense to be paid by the district. The BOR may order that the notes be transcribed, and in cases of an appeal or other court proceedings, they shall be transcribed. Even though the proceedings are recorded, members of the BOR should still take notes of testimony given to use for reference when reaching a decision on a property owner's objection. 70.47(8)(e)

f. All determinations of objections shall be by roll call vote. 70.47(8)(g)

2. The BOR may adjourn from time to time until its business is completed. If an adjournment be had for more than one day, a written notice shall be posted on the outer door of the meeting place, stating to what time said meeting is adjourned. 70.47(4)

3. Prior to the final adjournment, the BOR shall provide to the party contesting an assessment, a written notice of the amount of the assessment finalized by the BOR, and an explanation of appeal rights and procedures. (A sample of the notice form prescribed by the DOR is found at the end of this section.) 70.47(12)

Decisions by the Board of Review

In determining whether an assessment is inequitable, the BOR members should keep in mind that the assessor's valuations placed in the signed assessment roll are "presumptive evidence that all such properties have been justly and equitably assessed in proper relationship to each other." This has been reaffirmed in many court cases. 70.49(2)

In *State v. Williams, 160 Wis. 648 (1915)*, the court said, "The assessor's valuation is prima facie correct and is binding on the Board of Review in the absence of evidence proving it to be incorrect." And, again in *North Shore Development, 216 Wis. (1934)*, "The assessment fixed by the assessor is presumptively correct, and the Board of Review may adopt the same even though no evidence is introduced to substantiate it: even where property owner's evidence is to the effect that the assessment so fixed is too high, nor will the court on review reverse this if, on the record, there is reasonable ground to infer that the assessor's opinion of value was not improperly arrived at ... If there is credible evidence before the Board that may in any reasonable view support the assessor's valuation, that valuation must be upheld by the Board."

In *Krom v. Antigo, 220 Wis. 542 (1936)* the court said, "There can be no recovery of a tax paid unless it be shown that it is inequitable ... A difference of opinion, amounting to twelve and one-half percent of the value fixed by the assessor, does not within the rule of the cases cited warrant the court in saying that plaintiff is called upon to pay more than his share of the tax."

From these court decisions it would appear that every effort is being made by the Wisconsin courts to stop local BOR's from tampering with and changing valuations placed on the assessment roll by an assessor who acts in good faith. These cases show that no changes can be made without sworn oral testimony. In all cases testimony must be given orally before the BOR, not by the BOR. BOR members should not offer testimony as witnesses and then act on their own testimony.

The BOR is a quasi-judicial body and each member is to listen to the witnesses' testimony, the same as in a court. After hearing the testimony of both the witnesses and the assessor, the BOR decides the case based upon the evidence produced in the testimony, regardless of what their own personal convictions may be on the property in question.

1. From the evidence before it, the BOR shall determine whether the assessor's valuation is correct. If too high or too low, it shall raise or lower the same accordingly and shall state on the record the correct assessment and that the assessment is reasonable in light of all of the relevant evidence that the BOR received. The BOR cannot change any value as fixed by the assessor except upon sworn oral testimony produced for that purpose, or as provided in sec. 70.47(10), Wis. Stats. 70.47(9)(a), (6) (8)

2. The BOR shall presume that the assessor's valuation is correct. That presumption may be rebutted by a sufficient showing by the objector that the valuation is incorrect. 70.47(8)(i)

Only evidence given under oath is binding. In the case of *State v. Fuldner, 109 Wis. 56 (1901)* the court held that "Where no evidence under oath is given or offered before the BOR upon application to reduce an assessment the BOR has no power to reduce the valuation."

In the case of *State ex rel. International Business Machines Corporation v. Board of Review of City of Fond du Lac (1930) 231 Wis. 303*, the court held that if competent, unimpeached evidence showing that the assessor's valuation is incorrect is presented before the BOR, such evidence cannot be disregarded by the BOR, and the disregard of such evidence is a jurisdictional error.

In *Brown v. Oneida County 103 Wis. 149 (1899)* the court said "The Board is a creature of the statute, and has only such powers as have been given to it by statute." The BOR must consider only sworn oral testimony of witnesses appearing before it. The BOR is not an assessing body.

In *Althen v. Klein, 157 Wis. 308 (1914)* the court held that the BOR cannot change the assessor's valuation without evidence; but if the evidence furnished a substantial basis for the action of the BOR, and nothing indicated arbitrary or dishonest action, its decision will not be disturbed by the courts.

Assessment by Board or Review

Raising or Lowering Assessments Not Appealed

Once the assessor signs the affidavit, the assessment roll becomes an official legal document. All assessments listed in the roll are then presumed by law to be complete, correct, and equitable. The BOR cannot hold an uncomplained of assessment to be incorrect or inequitable unless the BOR arranges to have sworn oral testimony presented before the BOR proving the assessment incorrect as listed in the assessment roll.

The BOR can only make decisions relative to the assessments based upon sworn oral testimony. If the BOR wishes to raise or lower an uncomplained of assessment, or add omitted property to the assessment roll, the BOR shall:

1. Notify the owner, agent, or possessor of such property of its intention to review the assessment and of the time and place it on the assessment roll and of the time and place fixed for such hearing in time to be heard before the BOR in relation thereto,

provided the residence of such owner, agent, or possessor be known to any member of the BOR or the assessor. 70.47(10)

2. Fix the day, hour and place at which such matter will be heard.

3. Subpoena such witnesses, except objectors who may testify by telephone, as it deems necessary to testify concerning the value of such property. The expense incurred shall be a charge against the district.

4. At the time appointed, proceed to review the matter as provided in subsection (8).

At the hearing, the BOR must arrange to have expert oral testimony presented which proves the assessment to be wrong. After the BOR's expert witnesses have presented testimony, the assessor and the property owner may enter testimony to prove the correctness of the assessment as listed in the roll, and to show that the BOR's intent to change the assessment is wrong. In *Shove v. Manitowoc, 57 Wis. 5 (1883)* the Supreme Court said, "An arbitrary increase in assessment (by the BOR) without examination of witnesses under oath is void." (words in parenthesis added)

Board of Review – Clerk

1. When the assessment rolls have been completed they shall be delivered to the clerk. At least 15 days before the first day on which the assessment rolls are open for examination, a class 1 notice if applicable, or posted notice, under 985, in anticipation of the roll delivery as provided in sec. 70.50, Wis. Stats., that on certain days the rolls will be open for examination by the taxable inhabitants. 70.45, 70.50

2. Upon receiving the assessment roll, the clerk shall carefully examine it, correcting all double assessments, imperfect descriptions, and other errors apparent upon the face of the roll. The clerk shall add to the roll any parcel of omitted real or personal property and immediately notify the assessor. The assessor shall then view and value such omitted property, and certify a valuation to the clerk, who shall enter it upon the roll. 70.52

3. At least 15 days prior to the first BOR session, the clerk of the BOR shall publish a class 1 notice, place a notice in at least three public places and on the door of the Village Hall or City Hall, if the place of meeting has been otherwise designated of the time and place of the first meeting of the BOR under sec. 70.47(3), Wis. Stats., and of the requirements under sub (7)(aa) and (ac) to (af). 70.47(2)

4. If adjournment is taken for more than one day, the clerk should post a notice of the adjournment as the law provides. 70.47(4)

5. If the assessment roll is not completed at the time of the first meeting, the BOR shall adjourn for the time necessary to complete the roll, and shall post a written notice on the outer door of the place of the meeting stating the time to which the meeting is adjourned. 70.47(3)(aL)

6. The clerk shall provide an affidavit to the DOR stating that the training requirement under sec. 73.03(55), Wis. Stats., has been met by at least one voting member. 70.46(4)

7. The clerk submits the assessment roll and all sworn statements to the BOR at its first meeting. 70.47(3)(a)

8. The clerk shall keep a record in the minute book of all proceedings of the BOR. 70.47(5)

9. The town, city, or village clerk acts as clerk of the BOR and is responsible for keeping an accurate record of all of the BOR's proceedings. (In cities of the first class the commissioner of assessments, or any person designated by the commissioner, acts as the clerk of the BOR). 70.46(2)

10. The clerk is a voting member of the BOR, except for cities of the first class and county assessor systems. In towns, villages, and cities that have provided for a citizen's BOR the clerk may act as clerk of the BOR, but is not a member of the BOR and consequently has no vote. 70.46(1)

11. Appointed town clerks and town treasurers may not serve on the BOR. 70.46(1m)(a)

12. If the proceedings are taken by a recording device, the clerk shall keep a list of persons speaking, in the order in which they speak. (It is a good practice to have each person state their last name each time before speaking). 70.47(8)(e)

13. The clerk swears all persons testifying before the BOR in relation to assessments (this includes the assessor). The procedure is for the clerk to stand, face the witness with right hand raised and ask the witness to do the same.

    Then administer the oath in substantially the following form: "Do you solemnly swear, in the matter now in hearing, to tell the truth, so help you God." The witness shall reply in the affirmative. Should any witness refuse to be sworn in or present evidence under oath, a note of this should be made in the records of the

proceedings (i.e., refused to swear). It is in the best interest of the witness to be sworn in since the BOR has no power to adjust an assessed value if evidence is not given under oath. 70.47(8)(a)

14. The clerk shall make all corrections in the roll in accordance with the legally made decisions of the BOR. All valuation changes shall be made in red ink. 70.48

15. Prior to the final adjournment, the BOR shall provide the objector notice by personal delivery or mail, return receipt required, of the amount of the assessment as finalized by the BOR and an explanation of appeal rights and procedures. Upon mailing the notice under this subsection, the clerk of the BOR shall prepare an affidavit specifying the date when the notice was mailed. 70.47(12)

16. After the BOR has completed its determinations, the clerk shall prepare a summary of the proceedings and determinations on Form PA-800 prescribed by the DOR entitled "Summary of Board of Review Proceedings" (See sample form included at the end of this section). A supply of this form may be obtained through the county designee's office. This form is to be retained as part of the records of the BOR. 70.47(17)

17. Upon final adjournment of the BOR, the clerk shall complete the Statement of Assessments and mail one copy to the Supervisor of Equalization (by the second Monday in June). 70.53

18. The clerk is to act as custodian of the assessment roll, personal property statements, and BOR records after the BOR has met and adjourned. Personal property statements may be placed in custody of the assessor if more practical.

19. The clerk's notes, written objections, and all material submitted to the BOR, along with all tape recordings and transcripts, shall be retained for at least seven years and shall be available for public inspection. 70.47(8)(f)

20. Any person may provide to the municipal clerk written comments about valuation, assessment practices and the performance of an assessor. The clerk shall provide all of those comments to the appropriate municipal officer. 70.47(6r)

Duties of the Assessor

1. The assessor is responsible for mailing notices of changed assessments at least 15 days before the BOR meeting. As currently written, the statutes require a notice be sent for **any** change. 70.365

After the assessment notices have been mailed, and before signing the assessment roll and turning it over to the clerk, the assessor should allow enough time for property owners to receive the notices and contact the assessor to discuss their assessments if they desire to do so. When meeting with property owners, the assessor should explain how the assessments were made, verify the information that has been collected on the property owner's property, and obtain additional information as needed from the property owner. It is important that the assessor's attitude be one of cooperation and willingness to resolve problems and improve the assessments rather than one of justification and defense, although the assessor should be able to justify each assessment. The assessor should recognize that no matter how carefully the assessments are made, there may still be some problems. By allowing time to meet with property owners before finalizing the assessment roll, it may be possible to resolve problems, to correct any errors that are discovered, and thus decrease the number of formal objections presented to the BOR.

2. The assessor shall attach to the assessment roll, a statement that the notices required by law have been mailed. 70.365

3. The assessor must deliver the completed assessment roll and all sworn statements and valuations of personal property to the clerk on or before the first Monday in May, except in cities of the first class. 70.50

4. After the assessment roll has been completed, the assessor's affidavit in the front of the assessment roll must be completed and signed before the assessment roll is delivered to the BOR. 70.49

   In the case of *Bass v. Fond du Lac County, 60 Wis. 516 (1884)*, the court said: "The Board of Review and the clerk should see to it that the assessor's affidavit is signed and attached to the roll, for its absence is prima facie evidence of the inequality or injustice of the assessment and shifts the burden of proving it equitable and just to the municipality." But where the affidavit has been signed, then according to sec. 70.49(2), Wis. Stats., this constitutes "presumptive evidence that all such properties have been justly and equitably assessed in proper relationship to each other."

   Once the assessor has listed the property assessments on the roll and signed the assessor's affidavit, the assessments must be accepted as correct unless the testimonies of sworn witnesses prove that they are incorrect. Without sworn testimony contradicting the assessor, the BOR has no jurisdiction to set aside an assessment.

5. An assessor is not permitted to contradict or impeach the assessor's affidavit once it has been signed. **NOTE**: After the assessor's affidavit is signed, an error (as described in sec. 74.33(1), Wis. Stats.) may be discovered in the assessment roll. The assessor **does not** contradict or impeach the assessor's affidavit when acknowledging such an error. 70.49

6. The assessor shall be present for at least 2 hours while the assessment roll is open for inspection. Instructional material under sec. 73.03(54), Wis. Stats., shall be available at this meeting. 70.45

7. The assessor is not a member of the BOR. The assessor is the municipality's expert witness for the correctness of the assessment roll. 70.46(1)

8. The assessor shall attend all hearings before the BOR without notice. The assessor need not attend sessions of deliberation for decisions on the testimony that has been presented. If the property owner or the property owner's agent is not present at such sessions, the BOR cannot request any further testimony from the assessor. All the BOR can do is consider the testimony already presented. 70.48

9. Under oath, the assessor shall submit to examination and fully disclose to the BOR information pertinent to the inquiry being made. The assessor should be prepared to take all books, papers etc., to the BOR to explain any work that has been done. At the BOR meeting the assessor should be prepared to present the facts and valuation methods used in deriving the assessments. This necessitates that property record cards, comparable sales listings, and other materials used in making the assessments be available for reference at the BOR meeting. The assessor's defense of assessments should be given in a manner which will enable both property owners and the BOR to understand how the assessments were derived. The information presented should be detailed enough to allow the BOR to determine if the assessment is incorrect. 70.48

   The assessor shall provide to the BOR specific information about the validity of the valuation to which objection is made and shall provide to the BOR the information that was used to determine the valuation. 70.47(8)(h)

10. All part-time assessors shall receive the same compensation for attendance at the BOR as is allowed to the members of the BOR. If the assessor is full-time, there is no additional compensation for attendance at the BOR. If the assessor is paid on a per diem basis, the per diem payments for attendance at the BOR should be the same as that for BOR members. 70.48

11. No person shall be allowed to appear before the BOR, to testify to the BOR by telephone or to contest the amount of any assessment of real or personal property if the person has refused a reasonable written request by certified mail of the assessor to view such property.

    Before this restriction can be imposed, the assessor must send a "reasonable written request by certified mail" and the property owner must refuse the request.

    Failure to respond may be considered refusal. For those assessors who develop their own letters, we suggest addressing the following seven issues. A sample letter including these issues is found after this chart. 70.47(7)(aa)

Issues	Possible Letter Content
1. Identify who is writing.	Introduce and identify the appraisal firm or city, village, or town assessment office doing the property viewing.
2. Define the purpose of the letter.	Explain the nature of the viewing (interior, exterior, or both.) Explain whether other property owners are also being inspected. For example, the viewing is necessary for all property owners in the district (a complete revaluation), for only a few property owners (a general assessment maintenance purpose), or for only this individual property owner at the time (new construction, etc.).
3. Explain why a viewing is necessary.	Explain that a viewing is necessary for tax fairness. An accurate estimate of market value requires knowledge of all factors - both exterior and interior - that may contribute to value. Permission to inspect is a requirement to maintain appeal rights. You may want to quote sec. 70.47(7)(aa), Wis. Stats. You may also want to quote part of sec. 70.32, Wis. Stats., that discusses the necessity for assessors to view property.
4. Explain which structures will need viewing.	Specify which structures or buildings on the property needs viewing if known; otherwise, explain all structures need viewing.
5. Estimate how long the viewing will take.	Explain the approximate time needed for viewing or what is the average viewing time.
6. Identify the viewing time frame, offer alternatives, and schedule an appointment.	Allow at least two weeks (14 calendar days) for property owners to respond to schedule an appointment. Give at least two, preferably, three choices of times for an appointment that includes week days, week nights, and weekend times, if possible. Provide telephone numbers and office hours of when property owners can telephone to schedule appointments.
7. Explain the consequences of failing to respond to the certified letter.	Explain that failure to schedule an appointment by a specific date will mean an assessment will be made based on available information and appeal rights will be forfeited.

Sample Certified Letter

March 3, 2000

Mr. Kit Carson
2020 North Plankton Street
Badger, WI 54321

CERTIFIED MAIL
Dear Mr. Carson:

The Assessment Office of the Town of Badger is performing a complete revaluation of all property for 2000. We are conducting property viewings to update our records. This helps to ensure fair and equitable taxation of all property.

Section 70.32, Wis. Stats., instructs assessors to value real property based on "actual view." When assessors are not allowed to view a property, the law directs assessors to value the property based on "the best information that the assessor can practicably obtain …" This requires an estimation that may or may not be in your best interest.

On March 2, 2000, you refused an interior viewing of your home located at 2020 North Plankton Street, parcel number 9-99-99-99-9-9-9999. This is an official request to view the interior of your building improvements for property assessment purposes. The viewing will take approximately 30 minutes.

Please call our office at (715) 999-9999, before March 20, 2000, to schedule an appointment. Our regular office hours are 8:30 a.m. to 4:30 p.m., Monday through Friday. We have appointment times available on Thursday, March 23 from 9:00 to 11:00 a.m., Friday, March 24 from 5:00 to 7:00 p.m., or Saturday, March 25 from 1:00 to 3:00 p.m.

Please be aware that by failing to respond to this request before the date indicated may be considered a refusal. This may result in forfeiture of your right to appeal your assessment to the Board of Review. Section 70.47(7)(aa), Wis. Stats. states, "No person will be allowed to appear before the Board of Review, to testify to the Board by telephone or to contest the amount of any assessment of real or personal property if the person has refused a reasonable written request by certified mail of the assessor to view such property."

Sincerely,

Chief Assessor
Town of Badger

Board of Review – Property Owner

The time to check an assessment and meet with the assessor is before the BOR meeting. The BOR meets any time during the 30-day period beginning on the 2nd Monday in May. The assessor is required to send a notice of changed assessment when the total value of the property changed from the previous year. This notice contains information related to your assessment and the appeal process. It will give the dates, location and times for the open assessment roll period (open book) and the BOR. The BOR is the formal appeal process for assessments.

The issue of taxation is not handled through this process. If you are concerned about your taxes, you should contact those responsible for spending decisions; your municipal officials, county board members, and school board members. These are the individuals who determine and approve the spending that results in your property taxes, not the assessor. The assessor is only responsible for the equitable distribution of the tax.

If you don't understand your assessment discuss it with the assessor. The assessor can explain the assessment process, the factors considered and how the valuation was determined. A meeting with the assessor can clarify your assessment, answer your questions and correct errors. Review the information on your property to make sure the size, age, condition, number of bathrooms, and other physical characteristics are correct.

If, after meeting with the assessor, you feel that your property is not assessed at the same assessment level as other property in the municipality, the next step is to appeal the assessment to the BOR. The BOR is the initial court before which a property owner must appear to contest the assessed value of real and personal property that later becomes the base for determining tax liability.

Anyone planning to protest an assessment should have considerable information which is pertinent to ordinary market value. The best evidence would be the recent sale price of the property under protest if according to professionally acceptable appraisal practices the sale price conforms to recent arm's-length sales of reasonably comparable property, plus an account of any changes the property has undergone between the date of sale and the assessment date of January 1. The next best evidence of market value is the sale prices of other properties that are comparable to the property under protest. Lacking either of the above, oral testimony by a qualified witness who has made a market value appraisal of the property under protest is also good evidence. Supplementary information would include size and location of land, size and age of buildings, original cost, present cost of reproduction, depreciation and obsolescence, income, productivity, zoning restrictions, amount of fire insurance, and any other facts or conditions which would affect the market value of the property. If the property owner requests the BOR to hear testimony from certain witnesses, the BOR shall compel those witnesses to attend the hearing.

The property owner should not make the common mistake of comparing the assessment with only a few other pieces of similar property in the neighborhood which may be assessed at lower figures. The BOR could logically claim that the other properties are underassessed and proceed to call in witnesses and hear testimony which might result in a raise in the assessments of the other properties.

Recognizing that it is sometimes possible for a complaining property owner to pick a few low comparison assessments, the court said in the case of *Walther v. Jung, 175 Wis. 58 (1921)* that not less than 2% of assessed value can be compared. However, if the property owner can show that "arbitrary" methods or improper considerations influenced the valuation process, as in the Wisconsin Supreme Court case of *Levine v. Village of Fox Point, 191 Wis. 2d 363 (1995),* then the property owner is not held to a 2% minimum.

Filing an Objection

If you wish to object to the assessment of your property, contact the clerk to state your intention to file an objection. You should notify the clerk 48 hours prior to the first meeting of the BOR. Before property tax liability is finally determined, property owners have a right to a hearing if they believe that their individual assessments are in error or are inequitable. To be eligible to present an objection to the BOR, the property owner must have complied with the following statutes:

1. No person shall be allowed to appear before the BOR or to contest the amount of any assessment of real or personal property if a reasonable written request by certified mail of the assessor to view such property has been refused. 70.47.(7)(aa)

2. Any person, firm, or corporation who refuses to testify, or who fails, neglects, or refuses to make and file the statement of personal property shall be denied any right of abatement by the BOR on the assessment of the personal property unless they make a statement of reasons for the failure to file the return in the manner and form required. 70.35(4)

3. The property owner must specify in writing an estimate of the value of the land improvements and specify the information that was used to arrive at the estimate. If the assessor or owner used the income method, the owner must supply to the assessor all information about income and expenses. The municipality must provide by ordinance for confidentiality of this information, with exception for persons using the information in the discharge of duties imposed by law or the duties of their office or by order of a court. This information is not subject to inspection as a pubic record unless a court determines that it is inaccurate. 70.47(7)(af)

4. A person objecting to a valuation, at the time that the person provides written or oral notice of an intent to file an objection and at least 48 hours before the first scheduled session of the BOR or at least 48 hours before the objection is heard if the objection is allowed under sec. 70.47(3)(a), Wis. Stats., requests the removal of a member of the BOR. No more than one member may be removed under this subdivision. 70.47(6m)

Except in a first or second class city a member shall be removed under any of the circumstances described below:

a. If a member has a conflict of interest under an ordinance of the municipality in regard to the objection.

b. If a member has a bias and if the party requests the removal of a member for a bias. The party must submit with this request an affidavit stating that he or she believes the member has a personal bias or prejudice against the party and stating the nature of the bias or prejudice.

c. A member who would violate sec. 19.59, Wis. Stats., (code of ethics of local officials) by hearing an objection shall recuse himself or herself from that hearing. The municipal clerk shall file an affidavit to the DOR declaring whether the recusal requirement is fulfilled.

d. A member removed or recused may be replaced by the BOR, or not, as long as no fewer than three members hear the objection.

5. Any person may provide to the municipal clerk written comments about valuations, assessment practices and the performance of an assessor. The clerk shall provide all those comments to the appropriate municipal officer. 70.47(6r)

6. No person may appear before the BOR, testify to the BOR by telephone or contest the amount of any assessment unless, at least 48 hours before the first meeting of the BOR or at least 48 hours before the objection is allowed under sub. (3)(a), that person provides to the clerk of the BOR notice as to whether the person will ask for removal under sub. (6m)(a) and if so which member will be removed and the person's reasonable estimate of the length of time that hearing will take. 70.47(7)(ad)

Traditionally, assessment appeals were limited to the value placed upon the property. Under the use value assessment system for agricultural land, an erroneous classification of land can affect the total assessed value of a property. Agricultural property owners may appeal the classification of their property in addition to its assessed value. An appeal of classification usually relates to property in agricultural production during the prior year that has been mistakenly classified in a non-agricultural (market value) class.

If you are appealing the *classification* of your land that was in agricultural use during the prior year, but not classified as agricultural land for assessment purposes, you should be prepared to present evidence to the assessor or BOR verifying its use in agriculture. Evidence of agricultural use may include leases or financial records demonstrating an attempt to produce crops or livestock.

The DOR annually calculates guideline use values for every municipality in the state. These guideline use values are available from your local assessor or the DOR. Your parcel's agricultural use value will be largely determined by (1) the assessed value of your land in 1996 (frozen), (2) the guideline use values for the current year, and (3) the local level of assessment for your municipality.

Board of Review Hearing

1. Property owners who wish to protest their assessments are required to complete a written objection form which is filed with the BOR. Property owners must object to the total valuation of the property. They may not object to only the land value or only the improvement value. It is important that the objecting property owners completely fill out the objection form. In the case of *State ex rel. Reiss v. Board of Review 29 Wis. 2nd 246 (1965)* the objecting property owner, when completing the objection form, answered the question "What is the present fair market value of this property?" with "I don't know." The Supreme Court stated that "Surely the single most important fact relevant to an assessment is the fair market value of the property, and a taxpayer who desires to proceed with an objection in good faith must be prepared to take a position as to what the fair market value is." In this case the court held that the property owner had not properly completed the objection form and therefore, had no right to a hearing at the BOR. 70.47(7)(a)

2. Upon receipt of an objection, the BOR shall establish a time for hearing the objection. At least 48 hours notice of the time of hearing must be given to the objector or the objector's attorney, and to the municipal attorney and assessor. Where all parties are present and waive such notice in the minutes, the hearing may be held immediately. 70.47(3)(a)(5)

3. The BOR shall hear under oath all persons who appear before it and, by telephone, all ill or disabled persons who present to the BOR a letter from a physician, surgeon, or osteopath that confirms their illness or disability. 70.47(8)

4. The property owner or the property owner's representative and witnesses shall be heard first. The property owner's case must first be presented to the BOR before the assessor can be adversely examined. 70.47(8)(b)

5. Decisions are made only on sworn oral testimony. 70.47(8)

   If an individual wishes to introduce written testimony to the BOR without reading an entire appraisal report (or whatever the written evidence is), this can be accomplished by attaching the written testimony, appraisal report, or evidence to the Board of

Review Objection form. (This information is requested by the form.) By doing this, the written evidence becomes a part of the BOR proceedings. Because it is attached to the Board of Review Objection form; the written evidence is also saved for seven years (as are other BOR records).

A property owner must be able to present competent evidence to the BOR which establishes the current market value of the property. Market value is defined as the price a property will bring in an arm's-length sale of the property between a willing and informed buyer and a willing and informed seller under normal market conditions. The law provides that all assessments must be based upon the current market value of the property.

When current market value of a property has been proved, the assessment, as a percentage of the market value may be compared to the average percentage level of assessment of all property in the municipality. If the percent of assessment of the taxpayer's property compared to its market value can be shown to greatly exceed the average percentage level of all property in the municipality, this evidence furnishes conclusive proof to the BOR that the assessor's assessment of the property is in error and should be reduced. The assessment level of the taxation district may be obtained by contacting the assessor. An indicated assessment level may also be computed through a tabulation of recent sales showing the ratio of total assessment to total selling prices of properties sold. The greater number of sales used for this tabulation, the more accurate the indicated assessment level will be.

Although the law requires the assessor to make all assessments "at the full value which could ordinarily be obtained therefore at private sale," fractional assessments are permissible. In *State ex rel. Baker Mfg. Co. v. City of Evansville*, 261 Wis. 599 (1951) the court stated, "The statute and the assessor's oath contemplate the assessor's valuation will be 100% of such theoretical sale price but no taxpayer can be considered aggrieved by discrimination if the assessment is some fraction of such value applied uniformly to all property." Once the assessment level is known, the property owner can then proceed to deal with the question as to whether the assessment is at or near the common level.

7. No person shall be allowed in any action or proceedings to question the amount or valuation of the property unless the person in good faith has presented evidence to the BOR in support of the objection. The objector must make full disclosure, under oath, of all property in the district liable to assessment, and the value of that property. 70.47(7)(a)

In *State ex rel. N.C. Foster Lumber Co. v. Williams*, 123 Wis. 61 (1904), the court commented on the complainant's liability in these words, "owner of property must make full disclosure before the BOR of all facts pertaining to value or be denied any relief before the body."

8. After the first meeting of the BOR and before the BOR's final adjournment, an objector may not contact a BOR member about the objection and may not provide information to a BOR member about the objection, except at a session of the BOR. 70.47(7)(ac)

Appeals from the Board of Review Decision

If, after presenting a formal objection to the BOR, a property owner is still dissatisfied with an assessment, appeals can be made to higher assessment review authorities. The law provides various ways to appeal an individual assessment. One way is to the circuit court under sec. 70.47(13), Wis. Stats. Another is to the DOR under sec. 70.85, Wis. Stats. The property owner may also appeal to the municipality under sec. 74.35, Wis. Stats., for recovery of unlawful taxes, or under sec. 74.37, Wis. Stats., for a claim of excessive assessment. The law also provides a way for property owners to appeal an entire assessment roll in cases where there are widespread inequities or where the legality of the assessments is questionable. This is done under sec. 70.75, Wis. Stats. Each of these appeals is conditional, and can only be pursued if all of the statutory requirements are met.

Circuit Court by an Action for Certiorari

Sections 70.47(13) and 70.47(16), Wis. Stats., provide for an appeal of the BOR determination by an action for certiorari (requesting the court to review the written record of the hearing) to the circuit court. An action must be filed with the circuit court within 90 days after the property owner receives the notice required under sec. 70.47(12), Wis. Stats. No new evidence may be submitted, and the court decides the case solely on the basis of the written record made at the BOR.

If the court finds any errors in the proceedings of the BOR which render the assessment void, it shall remand the assessment to the BOR for further proceedings and retain jurisdiction of the matter until the BOR has determined an assessment in accordance with the court's order. The court may also remand the assessment to the BOR if it is determined that the BOR lacked good cause to deny the request for deposition. The court may order the municipality to reconvene the BOR if it has finally adjourned prior to the court's decision on the appeal. Section 75.54, Wis. Stats., outlines the proceedings for reassessments of a property by order of the court.

To Wisconsin Department of Revenue

Section 70.85, Wis. Stats., permits property owners to file a written complaint for a $100 filing fee with the DOR within 20 days after the property owner's receipt of the BOR determination or within 30 days of the date specified on the affidavit under sec. 70.47(12), Wis. Stats., if the property owner does not receive the notice. The basis of the complaint

must be that the assessment of one or more items or parcels of property in the taxation district, the value of which as determined by the BOR, does not exceed $1,000,000, is radically out of proportion to the general level of the assessments of all other property in the district. Both real and personal property can be appealed under this section.

The DOR may revalue the property and adjust the assessment of the property to the assessment ratio of other property within the taxation district, of the DOR determine that:

1. The assessment of the property is not within 10% of the general level of assessment of all other property in the taxation district.

2. The revaluation of the property can be satisfactorily completed without a reassessment of all property within the taxation district.

3. The revaluation can be accomplished before November 1 of the year in which the assessment is made or within 60 days of the receipt of the written complaint, whichever is later.

After receiving the complaint, the DOR will send questionnaires to the property owner and municipal clerk. Next, an informal conference is held where the property owner and assessor may present evidence as to their opinion of value. The DOR will the make a decision based on the evidence, to either sustain or adjust the assessment, or it will order one of its appraisers to further investigate the appeal.

At the conference the assessor should bring the property's record card for verification of data, sales analysis information, and any other pertinent data to substantiate the value.

The property owner should bring information to help support this or her opinion of value. This may include the following: a recent sale of the property, recent comparable sales, a recent appraisal, pictures, and evidence of any discrepancies in the assessment records.

The DOR uses information from its sales and fielded sales analysis systems to determine the level of assessment for the same class of property in the municipality. It compares the Full Value assessment to the assessed value of the property. If the property is found to be 10% or more over assessed the DOR will lower the assessment.

Example: If a property has a $95,000 assessed value, and the municipal level of assessment is 85.20%, the estimated full value assessment will be $111,500 ($95,000/.8520). If the market value is determined to be $100,000, the property is over-assessed by 11.5% (($111,500-100,000)/100,000). Therefore, the DOR would reduce the assessment.

If the assessment is adjusted by the DOR, it shall be substituted for the assessed value of the property shown on the tax roll, and the taxes computed and paid accordingly. If the DOR has not completed the revaluation by the time of the tax levy, the taxes on the property shall be based on the contested value. The property owner shall pay in full the tax based upon the contested valuation. If the DOR reduces the value of the property, the property owner may file a claim under sec. 74.37, Wis. Stats., for a refund of the taxes paid on the "over-assessment."

When the DOR reduces the value of a property, its expenses for the revaluation are charged back to the municipality. The charge back, based on staff time, is limited to a maximum $300. When the DOR sustains the assessment, no charges are incurred.

All individuals appealing under this section must have first contested their assessment by presenting a formal objection to the BOR for that year under sec. 70.47, Wis. Stats. Appeals from the determination of the DOR shall be by an action for certiorari in the circuit court of the county in which the property is located.

To Municipality and Court

The following statutes explain the procedures for appealing an assessment to the municipality.

Note: Check current statutes for accuracy.

Section 74.33, Wis. Stats., Sharing and charging back of taxes due to palpable errors.

1. GROUNDS. 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.

Section 74.35, Wis. Stats., 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 MUNICIPALITY.
   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:
      - Be in writing.
      - 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).
      - State as accurately as possible the amount of the claim.
      - Be signed by the claimant or his or her agent.
      - 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)(a) 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 ss. 74.11, 74.12, 74.85 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, 74.85 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)(a) 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.

Section 74.37, Wis. Stats., 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 the 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 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 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 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 sec. 70.47, Wis. Stats., 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 (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.

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.

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.

Reassessments under Section 70.75, Wis. Stats.

The BOR and appeals described to this point are all designed to provide legal remedy and relief from excessive assessment for individual parcels of property. However, the legislature has also provided remedy in those situations where the legality or equity of the entire assessment roll is in question.

Section 70.75, Wis. Stats., permits the owners of not less than five percent of the assessed value of all the taxable property in any taxation district to file a written complaint with the DOR (except in cities of the 1st class). The basis of the complaint must be that the assessment of property in the taxation district is not in substantial compliance with the law and that the interest of the public will be promoted by a reassessment.

The term "reassessment" as it relates to sec. 70.75, Wis. Stats., means the actual doing over of the assessment roll. Such action would be taken, if after a full investigation, the DOR was satisfied that a complaint appeared to have merit. Certified expert help or employees of the DOR would be appointed by the DOR to prepare a new roll, and the DOR would supervise the work that is performed throughout the course of the reassessment. The assessment roll completed by the appointed person(s) then becomes a legal substitute for the original assessment roll. Reviewing and correcting of the roll is done by a special three-person Board of Correction which is also appointed by the DOR. The Board of Correction replaces the local BOR. If the reassessment cannot be completed in time to take the place of the original assessment, correction of the inequalities may be made in the subsequent year. All fees and expenses for the reassessment are paid by the DOR and then charged back to the taxation district.

Since a reassessment incurs considerable extra expense to a taxation district, and since the public interest is a primary consideration, the DOR has the responsibility of deciding when the inequities in the original assessment are great enough to warrant the additional expense of a reassessment. The legislature has recognized that the inequities may be of various degrees, and has therefore provided as an alternative to a reassessment, special supervision of succeeding assessments under sec. 70.75(3), Wis. Stats. Under this alternative the DOR may appoint one or more employees of the DOR or other qualified persons to assist the assessor in making the assessment of the following year. In this case, the previous year's assessment roll is not affected. As in a reassessment, the DOR supervises the work that is performed. Expenses throughout a supervised assessment are paid by the DOR and then charged back to the taxation district upon completion of the project. Unlike a reassessment, the local BOR is not relieved of any responsibility when a supervised assessment is performed. It has the same powers, duties, and limitations as in any ordinary assessment year.

Administrative Procedure

Time for Application

The DOR will not take jurisdiction in any reassessment application until the assessment being appealed has in fact, been completed by the assessor, and the BOR has discharged its duties relative to the assessment and has finally adjourned. At such time, if property

owners believe that there are extensive inequities in the assessments or that the assessments are not in substantial compliance with the law, they may petition the DOR for a reassessment of the entire municipality. Petition forms can be obtained from the DOR.

Verification of Statutory Requirements

Upon receipt of the application or petition for reassessment the DOR sends a copy of the petition to the clerk of the taxation district for verification of the requirement that the signers of the petition own property whose aggregate assessed value for the year complained of is not less than 5 percent of the local assessed value of all taxable property in such taxation district.

Duty to Review is Mandatory

When a petition for reassessment is filed, the DOR is required to review the assessment being appealed and make a full investigation. The review and investigation cannot be impaired or set aside by any action of any one or more property owners represented on the petition once it has been filed with the DOR.

The DOR may not review a petition filed by a property owner who owns more than 5 percent of the assessed valuation in the taxation district if within the 3 years preceding the date of the petition that person petitioned for a reassessment and the DOR did not order a reassessment or a supervised assessment. However, if the property owner is joined by another owner or owners of an additional 5 percent of the assessed valuation the taxation district, the DOR shall then proceed to review the assessment.

Hearing Conducted by the Department of Revenue

As part of its investigation into the merits of the application for reassessment the DOR is required to hold a hearing within or near the taxation district in which the reassessment is sought. This is an administrative hearing which is basically fact finding. Notice of the hearing, specifying the time and place is to be mailed to the clerk of the taxation district and the first signer of the application for reassessment, not less than 8 days before the time fixed for the hearing. At the hearing, testimony may be offered as to the inequity or equity of the assessment, whether or not the public interest will be promoted by a reassessment and such other matters as may be desired by the DOR.

Investigation by the Department of Revenue

The hearing is only part of the considerations taken into account by the DOR. Subsequent to the hearing, a full investigation is made by the staff of the DOR, which includes a review of testimony presented, existing assessment records, valuation procedures, and the assessment uniformity or disparity. Depending on the circumstances in each appeal, the field investigation involves the following considerations:

1. Dispersion studies – A random sample of parcels from the assessment roll for the year in question is selected for further investigation.

2. When sufficient sales are available, a detailed statistical analysis of assessment/sales ratios is performed and evaluated by the DOR.

3. Existing record cards and maps – An evaluation is made of the database contained on the record cards relative to land and improvements. The real estate record cards are of vital importance; if a taxation district has adequate records available, it is often possible for the local assessor to correct inequities in the subsequent assessment rolls.

4. Valuation procedures – The valuation procedures as they pertain to real and personal property are analyzed. For example, the method used in valuing land with respect to classification, soil types, frontages, etc., are examined; personal property valuation compliance and audit procedures are considered.

5. The ratio of assessment for the various classes are examined to determine if equity exists between the classes of property.

Final Determination and Order

The interests of the public and all information in the files and records of the DOR, as well as the testimony given at the hearing and the results of the field investigation are considered before a determination is made regarding any application for reassessment. In issuing its determination and order the DOR has four distinct alternatives:

1. It may order a reassessment of all or of any part of the taxable property in the taxation district pursuant to sec. 70.75(1), Wis. Stats.

2. It may order a special supervision of succeeding assessments pursuant to sec. 70.75(3), Wis. Stats.

3. It may deny or dismiss the application for reassessment for the reason that such application is without merit and not in the public interest.

4. It may dismiss any petition for reassessment if, prior to the entry of a reassessment order the taxation district involved determines under sec. 70.055, Wis. Stats., that employing expert help to aid in assessing property would be in the public interest and if, after receiving departmental approval, the taxation district does employ expert help for either of the 2 years following the assessment year complained of.

Manufacturing Property Appeals

Manufacturing property is assessed by the DOR, and therefore, is not subject to the same appeal process as is other property. Please refer to WPAM Chapter 10 for further information on the appeal of manufacturing property assessments.

Appeals on Schedule D-1 Exempt Computer Equipment Form PA-003

When the assessor makes changes to the value of computer equipment in Schedule D-1 of the personal property statement, a Notice of Change to Reported Exempt Computers should be sent to the owner. Owners may file an objection under sec. 70.995(8), Wis. Stats.

Appellants must file their objection and include a $45 filing fee with the State Board of Assessors along with form PA-137. That form, along with instructions, is available through the following link:

http://www.revenue.wi.gov/forms/manuf/pa-137.pdf

Related Forms

The following link provides access to property tax related forms including:

PA-115A	Objection for Real Property Assessment
PA-115B	Objection for Personal Property Assessment
PR-302	Notice of Board of Review Determination
PR-800	Summary of Board of Review Proceedings

http://www.revenue.wi.gov/forms/govasr/spflist.html