

FILED
04-05-2019
Clerk of Circuit Court
Brown County, WI
2018CV000640

STATE OF WISCONSIN CIRCUIT COURT BROWN COUNTY
BRANCH 6

BROWN COUNTY,

Plaintiff,

v.

Case No. 18-CV-0640

BROWN COUNTY
TAXPAYERS ASSOCIATION
and FRANK BENNETT,

Defendants/Counterclaimants/
Third-Party Plaintiffs,

v.

PETER BARCA, Secretary
Wisconsin Department of Revenue,

Third-Party Defendant.

**THIRD-PARTY DEFENDANT'S
MOTION TO FILE ADDITIONAL AFFIDAVIT**

Third-Party Defendant Peter Barca,¹ Secretary of the Wisconsin Department of Revenue (the "Department"), moves for leave to file an affidavit in this matter, namely, the Affidavit of Valeah Foy. The grounds for the motion are as follows:

Pursuant to the Court's Order for Briefing Schedule dated November 19, 2018, Plaintiff Brown County and Defendants/Counterclaimants/Third-Party

¹ Secretary Peter Barca is automatically substituted for former Secretary Richard Chandler. Wis. Stat. § 803.10(4)(a).

Plaintiffs Brown County Taxpayers Association and Frank Bennett (together, “BCTA”) filed cross motions for summary judgment. Oral argument is scheduled for April 26, 2019.

The Department did not move for summary judgment. As stated in its response dated January 17, 2019, the Department takes no position regarding whether Brown County’s sales and use tax complies with state law. The Department explained that, even assuming the legal theory of BCTA is correct, it is not clear that an injunction against the tax would be the correct remedy. The Department requested further briefing on the proper remedy if the Court rules the tax in its current form violates Wis. Stat. § 77.70.

The Department offers this supplemental affidavit because it contains a public form that may be relevant to the dispute between Brown County and BCTA. Should there need for future discussion regarding remedy, this form may be relevant to that as well. The Department requests that this affidavit be accepted for consideration by the parties and the Court.

This form should not be construed as a position on the merits of this litigation. As the Department stated in its January 17, 2019, response, each county decides whether (and in what manner) to impose a sales and

use tax, and the Department's role with respect to the sales and use tax is administrative.

Dated this 5th day of April, 2019.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

s/ Jennifer L. Vandermeuse
JENNIFER L. VANDERMEUSE
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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed the foregoing Third-Party Defendant's Motion to File Additional Affidavit along with an Affidavit of Valeah Foy with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

I further certify that a copy of the above document was mailed to:

Joseph L. Olson
Michael Best & Friedrich LLP
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202-4124

Dated this 5th day of April, 2019.

s/ Jennifer L. Vandermeuse
JENNIFER L. VANDERMEUSE