

STATE OF WISCONSIN    CIRCUIT COURT    BROWN COUNTY

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BROWN COUNTY TAXPAYERS ASSOCIATION, et al.,  
Plaintiffs,

vs.

Declaratory Judgment  
Case No.:    18-CV-13  
Case Code:   30701

BROWN COUNTY, et al.,  
Defendants.

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**DEFENDANT, BROWN COUNTY’S, ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFFS’ COMPLAINT**

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Defendant, Brown County (“Defendant” or “Brown County”), by its attorneys, von Briesen & Roper, s.c., hereby answers the Complaint of Plaintiffs, Brown County Taxpayers Association (“BCTA”) and Frank Bennett (“Bennett”) (collectively, “Plaintiffs”), as follows:

1.     Answering paragraph 1, admits this is an action seeking to declare void and unenforceable Brown County’s recently enacted sales and use tax, denies that the tax is void and unenforceable and denies the remaining allegations in said paragraph.

**The Parties**

2.     Answering paragraph 2, lacks knowledge or information sufficient to form a belief as to the truth or accuracy of said allegations and therefore denies same.

3.     Answering paragraph 3, lacks knowledge or information sufficient to form a belief as to the truth or accuracy of said allegations and therefore denies same.

4.     Answering paragraph 4, lacks knowledge or information sufficient to form a belief as to the truth or accuracy of said allegations and therefore denies same.

5. Answering paragraph 5, lacks knowledge or information sufficient to form a belief as to the truth or accuracy of said allegations and therefore denies same.

6. Answering paragraph 6, admits.

7. Answering paragraph 7, admits.

### **Jurisdiction and Venue**

Defendant realleges and incorporates herein its answers to paragraphs 1 through 7.

8. Answering paragraph 8, admits that Plaintiffs seek a declaration under Wis. Stat. § 806.04, alleges that the allegation calls for a legal conclusion to which no response is required. If a response is required, denies that the County Sales Tax is void and unenforceable.

9. Answering paragraph 9, admits clauses (a) and (b) and denies clauses (c) and (d). Affirmatively allege the County Sales Tax is not void and unenforceable.

10. Answering paragraph 10, admits that venue may be proper in this Court under Wis. Stat. §§ 801.50(2)(a) and (c), but denies that Plaintiffs have followed necessary notice procedures under the Wisconsin Statutes to claim relief in said Court.

### **Statement of Facts**

Defendant realleges and incorporates herein his answers to paragraphs 1 through 10.

11. Answering paragraph 11, denies.

12. Answering paragraph 12, admits the ordinance was enacted on May 17, 2017 and denies the remainder of the first sentence as it calls for a legal conclusion to which no answer is required. If an answer is required, denies the remaining allegations in said sentence as to the January 1 date. As to the last two sentences in said paragraph, admits that the exhibits were attached and said documents speak for themselves.

13. Answering paragraph 13, admits.

14. Answering paragraph 14, admits.

15. Answering paragraph 15, admits as to the amounts of the projects, and affirmatively alleges that all said projects are capital projects which are allowed to exceed the levy limits and the sales and use tax can be used for such projects.

16. Answering paragraph 16, denies the first sentence in said paragraph and affirmatively alleges Brown County followed all required procedures in 2017 to issue its 2018 budget. Answering the second sentence in said paragraph, admits Exhibit D was attached to the Complaint and affirmatively alleges the document speaks for itself.

17. Answering paragraph 17, admits.

18. Answering paragraph 18, admits.

19. Answering paragraph 19, admits as to the amounts cited by Plaintiffs, and affirmatively alleges that such amounts are for capital construction projects which are allowed to exceed the levy limits and the sales and use tax can be used for the reduction of debt.

20. Answering paragraph 20, admits.

21. Answering paragraph 21, admits.

## **CAUSES OF ACTION**

### **First Cause of Action for Declaratory Judgment – Violation of Wis. Stat. § 77.70**

Defendant realleges and incorporates herein his answers to paragraphs 1 through 21.

22. Answering paragraph 22, admits.

23. Answering paragraph 23, admits that Wis. Stat. § 66.0621(3m) provides an exception allowing sales and use tax revenues for certain purposes, and denies the remaining allegations as they call for a legal conclusion.

24. Answering paragraph 24, denies.

25. Answering paragraph 25, denies.

26. Answering paragraph 26, denies.

27. Answering paragraph 27, admits Attorney General James Doyle issued a formal opinion, OAG 1-98, that an accurate copy of that opinion is attached, and denies the remaining allegations.

28. Answering paragraph 28, alleges the allegations in this paragraph call for a legal conclusion which does not require a response. If a response is required, denies plaintiffs' legal analysis and interpretation of the Attorney General's opinion and puts the plaintiffs to their strict burden of proof.

29. Answering paragraph 29, admits that Plaintiffs disagree with the Attorney General's interpretation, denies that the Attorney General contradicts the plain language of the statute, denies that the County Sales Tax violates § 77.70 for the reasons stated, and affirmatively allege that Plaintiffs fail to recognize the true and legal nature of the payments being made from the proceeds of the sales and use tax.

30. Answering paragraph 30, admits that OAG 1-98 occurred before the enactment of levy limits by the Wisconsin legislature, that counties were not subject to levy limits until 2006, and the date of enactment of Wis. Stat. 66.062, and denies the remaining allegations as they call for a legal conclusion.

31. Answering paragraph 31, admits that a part of the statute is cited and alleges the remaining allegations in this paragraph call for a legal conclusion which does not require a response. If a response is required, denies the entirety of the paragraph as it relates to the theories and allegations set forth by plaintiffs and puts the plaintiffs to their strict burden of proof.

32. Answering paragraph 32, denies.
33. Answering paragraph 33, denies.
34. Answering paragraph 34, admits Brown County intends to fund new capital projects over the next six years with the County Sales Tax and denies the remaining allegations.
35. Answering paragraph 35, admits Brown County's 2017 and 2018 levy limits, and denies the remainder of the allegations of said paragraph.
36. Answering paragraph 36, denies.
37. Answering paragraph 37, denies.
38. Answering paragraph 38, denies.
39. Answering paragraph 39, denies.
40. Answering paragraph 40, denies.
41. Answering paragraph 41, denies.
42. Answering paragraph 42, denies.

#### **AFFIRMATIVE DEFENSES**

AS FOR ITS AFFIRMATIVE DEFENSES, Defendant alleges and states as follows:

1. Plaintiffs fail to state a claim, in whole or in part, upon which relief may be granted.
2. Plaintiffs have failed to follow Wis. Stat. § 893.80's required notice requirements for claims against counties.
3. Plaintiffs have waived their rights, if any, to pursue the relief sought due to failure to follow required notice under the statute.
4. Plaintiffs cannot prove the harm required to proceed with their requested relief.
5. Plaintiffs have failed to meet the elements necessary to obtain injunctive relief.

6. Plaintiffs have failed to meet all conditions precedent necessary to maintain their claims.

7. Upon information and belief, plaintiffs may lack standing to proceed with this action.

8. Upon information and belief, this court may lack subject matter jurisdiction over claims asserted by plaintiffs.

9. Upon information and belief, defendants may have immunity from the claims asserted by the plaintiffs.

10. Plaintiffs reserve the right to add additional affirmative defenses on the grounds that discovery has just commenced.

WHEREFORE, Defendant seeks the following relief:

- (a) Dismissal of Plaintiff's claim with prejudice;
- (b) Award of Defendant's costs and fees; and
- (c) Such other and further relief as the Court deems reasonable and necessary.

Dated at Milwaukee, Wisconsin, this 26<sup>th</sup> day of January, 2018.

VON BRIESEN & ROPER, S.C.

By: Electronically signed by Andrew Phillips  
Andrew T. Phillips, SBN 1022232  
Steven L. Nelson, SBN 1009779  
Smitha Chintamaneni, SBN 1047047  
*Attorneys for Defendant, Brown County*

**MAILING ADDRESS:**

411 East Wisconsin Avenue, Suite 1000  
Milwaukee, WI 53202

PH: (414) 287-1570 (ATP)  
(414) 287-1463 (SLN)  
(414) 287-1515 (SC)

FAX: (414) 276-6281

Email: [aphillips@vonbriesen.com](mailto:aphillips@vonbriesen.com)  
[snelson@vonbriesen.com](mailto:snelson@vonbriesen.com)  
[schintam@vonbriesen.com](mailto:schintam@vonbriesen.com)

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