

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

BROWN COUNTY
305 East Walnut Street
Green Bay, WI 54301,
Plaintiff,

v.

Declaratory Judgment
Case No. 18-CV-640
Case Code: 30701

BROWN COUNTY TAXPAYERS ASSOCIATION
P.O. Box 684
Green Bay, WI 54305,

and

FRANK BENNETT
2774 Cormier Road
Green Bay, WI 54313,
Defendants/Counterclaimants/Third-Party Plaintiffs

v.

RICHARD CHANDLER, Secretary
Wisconsin Department of Revenue
2135 Rimrock Road
Madison, WI 53713,
Third-Party Defendant.

THIRD-PARTY SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Third-Party Defendant:

You are hereby notified that the Defendants/Counterclaimants/Third-Party Plaintiffs named above have filed a lawsuit or other legal action against you. The Third-Party Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Third-Party Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Clerk of Circuit Court,**

Brown County Courthouse, 100 S. Jefferson St., Green Bay, WI 54301, and to the Wisconsin Institute for Law & Liberty, Plaintiffs' attorneys, whose address is: **1139 E. Knapp Street, Milwaukee, WI 53202**.

You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Third-Party Complaint, and you may lose your right to object to anything that is or may be incorrect in the Third-Party Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 6th day of June, 2018.

Respectfully submitted,
WISCONSIN INSTITUTE FOR LAW & LIBERTY
Attorneys for Defendants/Counterclaimants/Third-Party
Plaintiffs

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**ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT OF
DEFENDANTS/COUNTERCLAIMANTS/THIRD-PARTY PLAINTIFFS BROWN
COUNTY TAXPAYERS ASSOCIATION AND FRANK BENNETT**

ANSWER

Defendants/Counterclaimants/Third-Party Plaintiffs Brown County Taxpayers Association (individually, the “Association”) and Frank Bennett (collectively, “BCTA”), by their attorneys, Wisconsin Institute for Law & Liberty, hereby answer the Complaint of Brown County as follows:

1. Admit.
2. Admit, and affirmatively allege that the Association is an unincorporated non-profit association.
3. Admit.
4. Admit this is an action seeking to declare Brown County's Sales Tax and 2018 Annual Budget valid and in full force in effect, and deny that the Sales Tax and Annual Budget are valid or enforceable and deny the remaining allegations.
5. Admit.
6. Admit.
7. Deny that the County had any need for the specified projects, deny that the capital projects were necessary, and deny that the amount specified represents a necessary amount of capital spending for 2018. Admit Exhibit A was attached to the Complaint and affirmatively allege the document speaks for itself. As to the remainder of the allegations in this paragraph, lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations and therefore deny same and put the Plaintiff to strict proof thereof.
8. Deny that the capital projects listed in Exhibit A were needed. As to the remainder of the allegations in this paragraph, lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations and therefore deny same and put the Plaintiff to strict proof thereof.
9. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

10. Admit Exhibit B was attached to the Complaint and affirmatively allege the document speaks for itself. Admit the remainder of the allegations in the paragraph.

11. Admit that the Board voted 23-3 to enact the Ordinance and deny the remainder of the first sentence. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of whether the conditions precedent to the implementation of the Sales Tax have been satisfied and put the Plaintiff to strict proof thereof. Admit the remainder of the paragraph.

12. Admit that the paragraph accurately quotes Section 9.02 of the Ordinance except that “.5 percent” is written “0.5 percent” in the Ordinance and deny that the paragraph contains the entirety of the Ordinance.

13. Admit that the Ordinance contains the listed restrictions. Deny that funding the capital projects reduces the property tax levy.

14. Admit.

15. Admit.

16. Admit and affirmatively allege that the provisions of the Ordinance relating to the County’s mill rate appear in Section 9.03.

17. Deny that the County would be forced to issue general obligation debt. Admit that if the County did issue general obligation debt during the 72-month period of the Sales Tax, the Ordinance would require the Sales Tax to sunset. Deny the remainder of the allegations in the paragraph.

18. This paragraph contains legal conclusions to which no answer is required. To the extent an answer is required, admit.

19. Admit.

20. Admit.

21. This paragraph contains legal conclusions to which no answer is required. To the extent an answer is required, deny that the paragraph completely and accurately describes the operation of levy limits.

22. This paragraph contains legal conclusions to which no answer is required. To the extent an answer is required, deny that the paragraph completely and accurately describes the statutory exception for general obligation debt and deny that Wis. Stat. § 60.0602(3)(d)(2) exists.

23. This paragraph contains legal conclusions to which no answer is required. To the extent an answer is required, admit that the levies referenced can be broadly generalized that way, and deny the necessity of any particular level of county spending.

24. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

25. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

26. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

27. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

28. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to

strict proof thereof, except that the effect of Wis. Stat. § 67.03(1)(a) is a legal conclusion to which no answer is required. To the extent an answer is required, deny that the paragraph completely and accurately describes the legal limitations on municipal debt.

29. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

30. Admit that a county's sales and use tax can (and must) be used to directly reduce the property tax levy. Deny that either of the examples given actually does directly reduce the property tax levy.

31. Admit.

32. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

33. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

34. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

35. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

36. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

37. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

38. Deny.

39. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the estimated interest charges on \$147 million in borrowing. Deny that such borrowing would be required or that the capital projects are necessary.

40. Lack information and knowledge sufficient to form a belief as to the truth or accuracy of the allegations in this paragraph and therefore deny same and put the Plaintiff to strict proof thereof.

41. Deny and affirmatively allege that the Ordinance expressly prohibits Sales Tax revenues from being used to pay debt service.

42. Admit and affirmatively allege that BCTA also filed suit against Richard Chandler in his official capacity as Secretary of the Wisconsin Department of Revenue in the Underlying Action.

43. Admit.

44. Admit Exhibit C was attached to the Complaint and affirmatively allege the document speaks for itself, and admit the remainder of the allegations in the paragraph.

45. Admit and affirmatively allege the document speaks for itself.

46. Admit and affirmatively allege the document speaks for itself

47. Admit Exhibit D was attached to the Complaint and affirmatively allege the document speaks for itself and admit the remainder of the allegations in the paragraph.

48. Admit that Brown County seeks declaratory relief from this Court and deny the remainder of the allegations in the paragraph.

49. BCTA re-alleges and incorporates by reference each and every one of the preceding paragraphs.

50. Admit.

51. Admit.

52. Admit.

53. Admit that Wis. Stat. § 77.70 is partially quoted, and deny the remainder of the allegations in the paragraph.

54. Admit that the Ordinance was adopted by a 23-3 vote of the Brown County Board, and deny the remainder of the allegations in the paragraph.

55. Admit.

56. Deny.

57. Deny.

58. BCTA re-alleges and incorporates by reference each and every one of the preceding paragraphs.

59. Admit.

60. Admit.

61. Admit.

62. Deny.

63. Deny.

AFFIRMATIVE DEFENSES

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

1. Plaintiff fails to state a claim upon which relief may be granted.
2. The Ordinance, Sales Tax, and 2018 County Budget, to the extent it implements the collection and expenditure of Sales Tax revenues consistent with the Ordinance, are invalid in violation of Wis. Stat. § 77.70.
3. BCTA reserves the right to add additional affirmative defenses on the grounds that discovery has not yet begun.

COUNTERCLAIM AND THIRD-PARTY COMPLAINT

NOW COME the Defendants/Counterclaimants/Third-Party Plaintiffs, Brown County Taxpayers Association (individually, the “Association”) and Frank Bennett (collectively, “BCTA”), by their attorneys, Wisconsin Institute for Law & Liberty, and as for their Counterclaim against Plaintiff Brown County and Third-Party Complaint against Third-Party Defendant Richard Chandler in his official capacity as Secretary of the Wisconsin Department of Revenue, allege as follows:

1. BCTA seeks to declare void and unenforceable Brown County’s recently enacted sales and use tax (the “Sales Tax”). By state law, such a tax “may be imposed only for the purpose of directly reducing the property tax levy.” Wis. Stat. § 77.70. The Sales Tax is not directly reducing the property tax levy. It is therefore void and unenforceable.

The Parties

2. Defendant/Counterclaimant/Third-Party Plaintiff Brown County Taxpayers Association (“the Association”) is an unincorporated nonprofit association. BCTA’s business address is P.O. Box 684, Green Bay, Wisconsin 54305-0684.

3. The Association's mission is to promote individual freedom and citizen responsibility; limited government which is fiscally responsible, transparent, and accountable to the people; and economic policy that encourages free markets, promotes entrepreneurship, respects property rights, and expands opportunity for the people of Brown County to prosper and live free, productive lives. A true and accurate copy of the Association's Bylaws is attached as Exhibit A.

4. The Association has over 100 dues-paying members, including individuals, businesses, and organizations who purchase and use products and services in Brown County. The Association's members have been paying the unlawful Sales Tax. The Association's members also include individuals, businesses, and other organizations who sell products and services in Brown County. Those members have to collect and remit the unlawful Sales Tax to the Wisconsin Department of Revenue ("DOR").

5. Defendant/Counterclaimant/Third-Party Plaintiff Frank Bennett is an adult citizen of the State of Wisconsin, residing at 2774 Cormier Road, Green Bay, Wisconsin 54313. He regularly purchases products and services in Brown County and has been paying the unlawful Sales Tax.

6. Plaintiff Brown County is a Wisconsin county with an address of 305 East Walnut Street, Green Bay, Wisconsin 54301. Brown County enacted the Sales Tax that is challenged in this lawsuit.

7. Third-Party Defendant Richard Chandler is the Secretary of the DOR. DOR is the state agency responsible for levying, enforcing, and collecting county sales and use taxes under Wis. Stat. § 77.76. Secretary Chandler is sued in his official capacity. Secretary Chandler's offices are located at 2135 Rimrock Road, Madison, Wisconsin 53703. Third-Party Defendant

Richard Chandler is a necessary party under Wis. Stat. § 803.03 or, alternately, a permissive party under Wis. Stat. § 803.04.

Jurisdiction and Venue

8. Pursuant to Wis. Stat. § 806.04, BCTA seeks a declaration that the Sales Tax is void and unenforceable.

9. This court has jurisdiction pursuant to Wis. Stat. § 806.04 in that: (a) there is a controversy between the parties as to the validity of the Sales Tax; (b) the interests of the parties are adverse in that BCTA seeks a declaration that the Sales Tax is void and unenforceable, Brown County enacted the Sales Tax, and Secretary Chandler is charged by law to enforce the Sales Tax, and the DOR receives a portion of the Sales Tax revenues in administrative fees; (c) BCTA has a legally-protected interest because Mr. Bennett is harmed by the imposition of the Sales Tax on products and services he buys, and the Association has standing to assert this claim on behalf of its members under Wis. Stat. § 184.07; and (d) the controversy is ripe for determination in that the Sales Tax has been enacted and went into effect on January 1, 2018.

10. BCTA served a Notice of Claim on Brown County on March 2, 2018 alleging that the Sales Tax was unlawful in violation of Wis. Stat. § 77.70, and requesting that the County acknowledge that the Sales Tax is illegal and cease all actions to levy, enforce, or collect the Sales Tax or spend any Sales Tax revenue.

11. Brown County disallowed the claim by certified mail on or about May 22, 2018.

12. Venue is proper in this Court under Wis. Stat. § 801.50(2)(a) and (c) because the claim arose in Brown County and Plaintiff Brown County does substantial business in Brown County.

Statement of Facts

13. Prior to January 1, 2018, Brown County did not have a county sales and use tax in effect.

14. On May 17, 2017, the Brown County Board of Supervisors enacted an ordinance creating a 0.5% sales and use tax (the “Ordinance”) intended to go into effect on January 1, 2018. A true and accurate copy of the Ordinance is attached as Exhibit B. A true and accurate copy of excerpts from the minutes for the Board’s May 17, 2017 meeting is attached as Exhibit C.

15. The Ordinance was signed by the Brown County Clerk on May 19, 2017, by the Brown County Executive on May 23, 2017, and by the Brown County Board Chair on May 24, 2017.

16. Upon information and belief, Brown County delivered a certified copy of that Ordinance to the Secretary of Revenue at least 120 days prior to January 1, 2018, as required by Wis. Stat. § 77.70.

17. According to the Ordinance, the Tax is dedicated to spending \$147,000,000 on the following new projects:

- 1) Expo Hall Project - \$15,000,000
- 2) Infrastructure, Roads and Facilities Projects - \$60,000,000
- 3) Jail and Mental Health Projects - \$20,000,000
- 4) Library Project - \$20,000,000
- 5) Maintenance at Resch Expo Center Project - \$10,000,000
- 6) Medical Examiner and Public Safety Projects - \$10,000,000
- 7) Museum Project - \$1,000,000
- 8) Parks and Fairgrounds Project - \$6,000,000
- 9) Stem Research Center Project - \$5,000,000

18. In 2017 the Brown County Executive issued a 2018 budget proposal. A true and accurate copy of excerpts from the budget proposal is attached as Exhibit D.

19. On November 1, 2017, the Brown County Board of Supervisors made minor amendments to the budget proposal (not relevant to this dispute) and adopted it, as amended, as the County's 2018 budget. On November 7, 2017, the Brown County Executive signed the 2018 budget with no vetoes. A true and accurate copy of excerpts from the minutes for the Board's November 1, 2017 meeting is attached as Exhibit E.

20. The budget creates a special fund "to account for the collection and use of .05% (sic) County sales tax imposed for capital improvements." (Exhibit D, p. 17.)

21. The budget estimates that the Sales Tax will raise \$22,458,333 in 2018 and calls for spending \$17,895,065 of that revenue. (Exhibit D, p. 329.) That money is budgeted to be spent on the following new projects:

- 1) Highway Projects - \$9,264,687
- 2) Facility Building Upgrades - \$250,000
- 3) Jail Projects: Sheriff Jail Pods - \$1,071,258
- 4) Library Branch Expansion/Relocation - \$1,000,000
- 5) Medical Examiner Facility - \$528,120
- 6) Museum Permanent Exhibit - \$500,000
- 7) Parks Improvements - \$500,000
- 8) Brown County Research and Business Park: STEM Innovation Center - \$4,200,000
- 9) Public Safety Communications Upgrades: 9-1-1 & TS SDC UPS Replacement - \$581,000

(Exhibit D, p. 279-80.)

22. For 2017, Brown County's levy was \$86,661,972. For 2018, Brown County's levy limit under Wis. Stat. § 66.0602(2) was \$91,115,007. A true and accurate copy of the County's Levy Limit Worksheet for 2018 is attached as Exhibit F.

23. The 2018 budget sets Brown County's property tax levy at \$90,676,735, leaving \$438,272 of the County's levy limit unused. (Exhibit E, p. 71.)

24. On January 1, 2018, the Sales Tax went into effect.

CAUSES OF ACTION

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

25. Counties obtain their authority to impose a sales and use tax from Wis. Stat. § 77.70. The pertinent portion of § 77.70 reads as follows:

Any county desiring to impose county sales and use taxes under this subchapter may do so by the adoption of an ordinance, stating its purpose and referring to this subchapter. The rate of the tax imposed under this section is 0.5 percent of the sales price or purchase price. Except as provided in s. 66.0621 (3m), **the county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety** as provided in this subchapter.

(Emphasis added.)

26. Wis. Stat. § 66.0621(3m) provides a newly-created exception allowing sales and use tax revenues in counties with an “electronics and information technology manufacturing zones” to be used to pay interest and principal on bonds. *See* 2017 Wis. Act 58. That exception is not at issue here, as Brown County does not have an electronics and information technology manufacturing zone.

27. On its face, the language of § 77.70 emphasized above requires a county to use all of the proceeds from a sales and use tax exclusively to reduce the amount of money it collects in property taxes (the property tax levy). Thus the statute requires that the enactment of a sales and use tax cause the property tax levy to be lowered by an amount equal to the estimated receipts from the sales and use tax.

28. The Sales Tax is not being used only to directly reduce its property tax levy. Brown County’s 2017 property tax levy was \$86,661,972. If the Sales Tax was being used only to reduce the property tax levy, the 2018 levy would be \$64,203,639 (the 2017 levy less the estimated revenue from the Sales Tax in 2018). Even after accounting for allowable increases (a 2018 levy limit of \$91,115,007), the 2018 levy should be no higher than \$68,656,674.

29. Alternatively, Brown County could have collected and saved the sales tax revenues during 2018 and then subtracted the balance from 2019's property tax levy. Instead, however, Brown County chose to spend those revenues on new projects.

30. Because the Sales Tax is not being used only to directly reduce Brown County's property tax levy, it violates Wis. Stat. § 77.70 and is void and unenforceable.

31. In 1998, then-Attorney General James Doyle issued a formal opinion interpreting § 77.70 more broadly. OAG 1-98. A true and accurate copy of that opinion is attached as Exhibit G.

32. The Attorney General opined that as well as being used as a line item to lower the property tax levy, a county sales and use tax could be used to pay for new spending, so long as that new spending could otherwise have been paid for with a property tax. The Attorney General reasoned that there was no important difference between using a sales and use tax to pay for existing spending (directly lowering the property tax levy) and using a sales and use tax to pay for new spending (preventing the property tax levy from rising). He concluded that if a county could have raised the property tax levy to pay for spending on new projects, it is permissible to use a sales and use tax to pay for the same projects, despite the language of the statute. There has been no judicial determination confirming Attorney General Doyle's interpretation of the statute.

33. BCTA disagrees with the Attorney General's interpretation, which contradicts the plain language of the statute. Wis. Stat. § 77.70 calls for a direct reduction of the property tax levy, not the absence of an increase in the levy.

34. But even if the Attorney General's interpretation is correct, the Sales Tax still violates § 77.70, because the property tax levy could not have been raised to pay for the new spending funded by the Sales Tax.

35. OAG 1-98 and the language in Wis. Stat. § 77.70 requiring that sales and use tax revenues be used to directly reduce property tax levies both came before the enactment of levy limits by the Wisconsin Legislature. Counties were not subject to levy limits until 2006. Wis. Stat. § 66.0602, which imposes levy limits on counties, was created by 2005 Wis. Act 25.

36. Under § 66.0602(2), "political subdivisions" (which include counties, § 66.0602(1)(c)) may not increase their levies "in any year by a percentage that exceeds the political subdivision's valuation factor." A "valuation factor" "means a percentage equal to the greater of either the percentage change in the political subdivision's January 1 equalized value due to new construction less improvements removed between the previous year and the current one or zero percent." § 66.0602(1)(d).

37. Effectively, a county's levy is fixed at its current level, and can normally be raised only if the county experiences a net positive growth in property values due to new construction. Absent a statutory exception, a county cannot exceed this levy limit unless it gets approval by referendum of the voters. § 66.0602(4).

38. The Attorney General's reasoning does not apply in the circumstances created by levy limits. Because of levy limits, it is no longer true that a county can raise the property tax levy to pay for any new expenditures its county board wishes. Because a county could not raise its property tax to pay for those projects, implementing a sales and use tax to pay for those projects does not avoid a property tax increase that would otherwise occur.

39. Brown County proposes to fund \$147,000,000 in new projects over seven years with the Sales Tax. Given its levy limits, it could not raise its property tax levy to fund these projects, and for that reason the Sales Tax will not be used only to directly reduce property taxes. Instead, Brown County is using the Sales Tax to evade its levy limits, increasing the taxes it collects by over 30%.

40. Brown County's 2017 levy was \$86,661,972.00. Brown County's 2018 levy limit was \$91,115,007. By law, Brown County could raise its levy only \$4,453,035 to pay for new spending in 2018.

41. Brown County therefore could not have raised its property tax levy to pay for the \$17,895,065 in projects being funded by the Sales Tax in 2018.

42. Brown County is therefore not using the Sales Tax only to directly reduce the property tax levy, even under the Attorney General's interpretation.

43. The fact that Brown County might have been able to raise property taxes in excess of its levy limit to pay for debt service on new borrowing, *see* Wis. Stat. § 66.0602(3)(d)2., does not save the Sales Tax. First, the County was not in a position to borrow for the projects, which would have required clearing a variety of procedural hurdles and which would have been subject to a variety of limitations and restrictions that were avoided here, as well as to additional public scrutiny. *See generally* Wis. Stat. § 67.045(1). Second, imposing a sales and use tax in order to avoid the mere possibility of borrowing money and the attendant increase in the property tax levy to pay for that debt service is not a "direct[]" reduction of the property tax levy. Wis. Stat. § 77.70.

44. In sum, the Sales Tax violates Wis. Stat. § 77.70, is void and unenforceable.

45. The imposition of the Sales Tax raises the price the Association's members pay for all taxed products and services in Brown County, increasing their cost of living and reducing the amount of money they can spend on other products and services. The Association's members who collect sales and use taxes in the course of selling products and services in Brown County have an added administrative burden collecting and remitting the Sales Tax, and the Sales Tax raises the price they must charge their customers and/or decreases their profit margins, putting them at a competitive disadvantage compared to businesses outside the County. The Association therefore has members who are directly and negatively affected by the Sales Tax.

46. The imposition of the Sales Tax raises the price Mr. Bennett pays for all taxed products and services in Brown County, increasing his cost of living and reducing the amount of money he can spend on other products and services. Mr. Bennett is directly and negatively affected by the Sales Tax.

47. The Defendants/Counterclaimants/Third-Party Plaintiffs are harmed by the imposition of the Sales Tax.

48. The Defendants/Counterclaimants/Third-Party Plaintiffs are therefore entitled to a declaration that the Sales Tax is void and unenforceable, and an injunction prohibiting the Plaintiff and Third-Party Defendant from levying, enforcing, or collecting the Tax.

WHEREFORE, Defendants/Counterclaimants/Third-Party Plaintiffs request the following relief:

1. Dismissal of Plaintiff's claim with prejudice;
2. A declaratory judgment declaring the Sales Tax void and unenforceable;
3. A permanent injunction prohibiting the Plaintiff and Third-Party Defendant from levying, enforcing, or collecting the Tax and directing the Plaintiff and Third-Party Defendant to

take to-be-specified steps to refund illegally-collected taxes and prevent further collection of the Sales Tax;

4. Costs as allowed by law; and
5. Such other relief as the Court deems proper.

Dated this 6th day of June, 2018.

WISCONSIN INSTITUTE FOR LAW & LIBERTY
Attorneys for Defendants/Counterclaimants/Third-Party
Plaintiffs

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EXHIBIT A

BYLAWS OF THE BROWN COUNTY TAXPAYERS ASSOCIATION As Amended October, 2010

I ARTICLE - Name

The name of the organization shall be the Brown County Taxpayers Association (BCTA).

II ARTICLE - Purpose

The Association shall be non-partisan. The mission of the Association shall be to promote:

- Individual freedom and citizen responsibility.
- Limited government which is fiscally responsible, transparent and accountable to the people.
- Economic policy that encourages free markets, promotes entrepreneurship, respects property rights, and expands opportunity for the people of Brown County to prosper and live free, productive lives.

The Association's actions in support of its mission shall include:

- Educating citizens about public policy alternatives, and the actions of government leaders, officials and agencies.
- Encouraging active and participative citizenship among the people of Brown County.
- Influencing public policy through research, development and discussion of alternatives, collaboration with similarly focused groups, and advocacy.

III ARTICLE - Membership

Section 1 - Any citizen who is 18 or more years of age, business establishment, or other organization interested in the stated purpose of the BCTA, shall be eligible for membership, subject to the provisions of Article V, and to approval by the board of directors in their absolute discretion.

Section 2 - Application for membership shall be made by an application blank provided by the Association. The application shall be accompanied by the annual dues and shall be mailed or turned over to the treasurer.

IV ARTICLE - Termination of Membership

Membership may be terminated:

- (a) For nonpayment of dues.
- (b) By resignation, in writing, addressed and delivered to the President or the Secretary. The person resigning shall forfeit all right or claim of any nature whatsoever to, or against, the Association, its property, funds, directors, officers, or employees.
- (c) By resolution approved by a majority of the Board of Directors; such resolution need not show cause, shall be final, and there shall be no appeal therefrom. The person

affected shall be entitled to the return of a proportion of any annual dues paid for the current fiscal year, after deducting therefrom, all monies owing to the Association, and the person affected shall have no recourse against the Association, its property, funds, directors, officers, or employees.

V ARTICLE - Disqualification for Committee Chairmanship or Office

No holder of any partisan elective office shall be a director or hold any office or committee chairmanship in the Association, and any such position held in the Association shall immediately become vacated upon such candidacy, incumbency, or employment.

VI ARTICLE - Dues

Section 1 - The annual dues shall be set by the Board of Directors and payable by each member annually by the anniversary date of their joining the organization.

Section 2 - There shall be no assessments over and above the annual dues.

VII ARTICLE - Directors

Section 1 - The government and the management of the Association shall be vested in a board of up to 21 elected directors, who shall be members in good standing at the time of the election.

Section 2 - At the discretion of the President and approval of the Executive Committee, new directors may be appointed to serve initial 3-year terms of office, as long as the total number of directors does not exceed 21.

Section 3 - One third of the board of directors shall constitute a quorum. Any member of the board who shall be absent from more than one-third of the meetings of the board during any fiscal year of the Association shall be deemed to have resigned as a member of the board, and shall thereupon cease to be a member thereof.

Section 4 - Questions arising at any meeting of the board of directors shall be decided by a majority vote of those board members present.

Section 5 - The board of directors, in addition to, or as part of its other powers, shall have the power to make rules and regulations not inconsistent with law or with these bylaws, and to do all other things they may deem necessary in the proper operation, government, and management of the Association.

Section 6 - Meetings of the board of directors shall be held at least quarterly at a place and time fixed by the board or by the president. Special meetings of the board shall be held whenever called by the president, or by not less than one-fourth of the directors then in office. The secretary shall give notice of each regular and special meeting at least two days before

the meeting to each director. At any meeting, at which every director shall be present, even though without notice, any business may be transacted.

Section 7 - The board of directors may delegate from time-to-time, to suitable committees, any duties that are required to be executed during the intervals between meetings of the board, and such committees shall report to the board when and as required.

Section 8 - Any action required by the bylaws, or any other action which may be taken at a meeting, may be taken without a meeting if a consent in writing setting forth the action has been signed by all of the directors thereof entitled to vote.

VIII ARTICLE - Officers

Section 1 - The elective officers of this Association shall be: a president, a first and second vice president, a secretary, and a treasurer. The board of directors may appoint or employ such other officers as it may deem necessary.

Section 2 - The elective officers of the Association shall be elected by ballot by the board of directors from their own membership at the first board meeting after the annual meeting, to serve until the next annual meeting, or until their successors are elected.

Section 3 - The president shall be the chief executive officer of the Association and shall perform all the acts and duties usually incident to such office, including the duty of presiding at all meetings of the members and of the board of directors.

Section 4 - The vice presidents shall have the power and authority to perform all the functions and duties of the president, in his/her absence or disability. S/he shall perform such other duties as may from time-to-time be assigned to him/her by the board of directors.

Section 5 - The secretary shall keep the minutes of all meetings of the board of directors and the minutes of all meetings of the membership. S/he shall, in general, perform all duties incident to the office of secretary, and shall perform such other duties as may from time-to-time be assigned to him/her by the board of directors.

Section 6 - The treasurer shall have custody of all funds and securities of the Association, and shall keep full and accurate accounts of all receipts and disbursements in the books of the Association. S/he shall collect all monies due the Association, giving receipts in the Association's name. S/he shall endorse for collection, checks and other obligations and shall deposit the same and other funds of the Association in the name of the Association in such bank or banks as the board of directors shall designate. S/he shall pay by check, signed by either the president, the vice president, or the treasurer, any and all bills or obligations incurred by the Association or by any and all committees. S/he shall make an annual report of all funds received and disbursed, and shall also make a monthly report to the board of directors and the membership at their regular meetings. If required by the board of directors, s/he shall furnish a bond, at the expense of the Association, as security for the faithful

performance of his/her duties in such sum as may be fixed by the board. S/he shall, in general, perform all duties incident to the office of treasurer.

IX ARTICLE - Nomination of Directors

Nominations for the directors to be elected at an annual meeting shall be made by a nominating committee of not less than three members of the Association which shall be appointed by the president. The nominating committee shall present its nominations to the secretary at least 15 days before the annual meeting, and the secretary shall have notice of such nominations in the hands of the members at least five days before the annual meeting.

Nominations from the membership at large may be made at the annual meeting.

X ARTICLE - Vacancies

Section 1 - The office of a director, or of any officer, shall be deemed vacated if s/he shall be legally declared of unsound mind, or if s/he is convicted of a criminal offense, or by notice in writing to the Association resigning his/her office, or pursuant to Article VII, Section 3 of the bylaws.

Section 2 - Any director or officer may be removed from office and a successor elected by resolution passed at a special meeting of the board called for that purpose.

Section 3 - If any vacancy shall occur among the directors or officers by death, resignation, or otherwise, the remaining directors, by affirmative vote of a majority of those present at any meeting at which there is a quorum, may elect a successor to hold office for the unexpired portion of the vacated term, or until election of his/her successor.

Section 4 - Vacancies in the executive committee shall be filled by the board of directors.

XI ARTICLE - Committees

Section 1 - The executive committee shall consist of three members appointed from the board of directors, in addition to the president, vice-presidents, secretary, and treasurer. The president shall be the chairman of the executive committee. During the intervals between the meetings of the board of directors, the executive committee shall have all the power of the board of directors of the Association in all cases in which specific directions shall not have been given by the board. The actions of the executive committee shall be binding on the Association. Any action shall be reported to the board of directors at its meeting next succeeding such action. A majority of the committee shall constitute a quorum, and questions arising at any meeting of the executive committee shall be decided by a majority vote of the committee.

Section 2 - The president shall appoint, from time-to-time, such committees as the business of the Association requires.

XII ARTICLE - Meetings

Section 1 - An annual meeting of the membership, with election of directors, shall be held at the same time immediately preceding the end of the fiscal year.

Section 2 - Other meetings of the entire membership may, from time-to-time, be called by the board of directors or by the president. Upon written request of ten percent of the membership, the board of directors shall call a special meeting.

Section 3 - The place, date, and time of the meetings of the membership shall be fixed by the board of directors, or by the president, as the case may be.

Section 4 - The membership shall be given at least five days prior written notice of any meeting.

Section 5 - Seven (7) members shall constitute a quorum.

Section 6 - Each member shall be entitled to one vote if present in person. There shall be no proxies.

XIII ARTICLE - Rules of Order

Section 1 - All proceedings of the Association shall be conducted under, and pursuant to, Roberts' Revised Rules of Order, except as otherwise provided within the bylaws.

XIV ARTICLE - Amendments

Section 1 - These bylaws may be amended at any regular or special meeting of the membership by a vote of a majority of the members, or by a vote of a majority of the directors present at a meeting, provided that written notice of the meeting and the proposed amendment and a copy thereof, shall have been given at least five days prior to the date of the meeting.

Section 2 - Promptly after their enactment, the secretary shall make known to the membership of bylaw changes through notification in the association newsletter.

XV ARTICLE - Miscellaneous

Section 1 - The fiscal year of the Association shall end on September 30 in each year.

Section 2 - A copy of the bylaws shall be made available to each member in good standing upon their request to the secretary.

Section 3 - The rights and interests of a member in the privileges of the Association shall terminate upon termination of membership. All persons who have been admitted to membership shall be deemed to have assented to be bound by the bylaws and rules and regulations of the Association, any rulings, or decisions properly made.

CHAPTER 9

BROWN COUNTY SALES AND USE TAX

9.01 AUTHORITY. This Ordinance is enacted under the authority of Subchapter V of Chapter 77 of the Wisconsin Statutes, and acts amendatory thereto.

9.02 PURPOSE. This Ordinance enacts a temporary 72 month, 0.5 percent Brown County sales and use tax, revenues from which: 1) **Shall not be utilized** to fund any operating expenses other than lease payments associated with the below mentioned specific capital projects; and 2) **Shall be utilized only** to reduce the property tax levy by funding the below listed specific capital projects, as well as funding said specific capital projects' associated costs as deemed appropriate by Brown County administration, in the below listed estimated amounts:

- (1) Expo Hall Project – \$15,000,000.00;
- (2) Infrastructure, Roads and Facilities Projects – \$60,000,000.00;
- (3) Jail and Mental Health Projects - \$20,000,000.00;
- (4) Library Project – \$20,000,000.00;
- (5) Maintenance at Resch Expo Center Project – \$10,000,000.00;
- (6) Medical Examiner and Public Safety Projects – \$10,000,000.00;
- (7) Museum Project – \$1,000,000.00;
- (8) Parks and Fairgrounds Project – \$6,000,000.00; and
- (9) Stem Research Center Project – \$5,000,000.00.

9.03 MILL RATE FREEZE. While this temporary sales and use tax Ordinance is in effect, the Brown County Mill Rate shall not exceed the 2018 Brown County Mill Rate. If the Brown County Mill Rate does exceed the 2018 Brown County Mill Rate during the 72 months that this temporary 0.5 percent Brown County sales and use tax is in effect, then this sales and use tax shall sunset on December 31 of the year the Brown County Mill Rate exceeds the 2018 Brown County Mill Rate.

9.04 EFFECTIVE COMMENCEMENT AND SUNSET DATES. Subject to the following contingencies being met **on or before August 15, 2017**, this Ordinance shall take effect on January 1, 2018, and shall sunset 72 months thereafter, unless during said 72 month period any general obligation debt, excluding refunding bonds, is issued by Brown County in which case this Ordinance shall sunset on December 31 of the year any general obligation debt, excluding refunding bonds, is issued:

- 1) Contingency 1 (to be met on or before August 15, 2017): The **Village of Allouez**, the **Village of Ashwaubenon**, the **Village of Bellevue**, the **Village of Howard**, the **Village of Suamico**, the **City of De Pere**, and the **City of Green Bay** shall all take such municipal acts as are necessary, to the satisfaction of Brown County, authorizing such municipality to execute and deliver an amendment or supplement to, or restatement of, the Cooperation Agreement dated as of June 1, 1999, as previously amended (including by the Agreement Between Brown County and City of Green Bay for Surplus Net Room Taxes for KI Expansion, effective June 30, 2012, as amended),

among such municipalities and Brown County (the "Cooperation Agreement"), which shall contain the following provisions:

- (a) The expiration date of the Cooperation Agreement shall be extended to the date of final payment of the bonds or other indebtedness issued to finance the Expo Hall Project (including any such bonds or indebtedness issued to refinance or refund previously issued bonds or indebtedness for such purpose) (the "Expo Hall Bonds") and;
- (b) Net Room Tax Revenue remaining after debt service payments are made for the bonds for the Resch Center Project and the KI Convention Center, including bonds which financed the KI Expansion Project, shall be dedicated to the payment of debt service on the Expo Hall Bonds.

- 2) Contingency 2 (to be met on or before August 15, 2017): PMI Entertainment Group, Inc. shall agree in writing to reopen and renegotiate its contract with Brown County.

Section 2. Subject to the contingencies stated in Section 9.04, above, being met on or prior to August 15, 2017, this Ordinance shall take effect on January 1, 2018, and the County Clerk shall deliver a certified copy of this Ordinance to the Wisconsin Secretary of Revenue on or before September 1, 2017 (at least 120 days prior to January 1, 2018).

EXHIBIT C

PROCEEDINGS OF THE BROWN COUNTY BOARD OF SUPERVISORS **MAY 17, 2017**

Pursuant to Section 19.84 and 59.14, Wis. Stats., notice is hereby given to the public that the REGULAR meeting of the **BROWN COUNTY BOARD OF SUPERVISORS** was held on **Wednesday, May 17, 2017 at 7:00 p.m.**, in the Legislative Room 203, 100 North Jefferson Street, Green Bay, Wisconsin.

The following matters will be considered:

Call to order at 7:00 p.m.
Invocation.
Pledge of Allegiance.

Opening Roll Call:

Present: Sieber, De Wane, Hoyer, Gruszynski, Lefebvre, Erickson, Evans, Vander Leest, Buckley, Landwehr, Dantine, Brusky, Kaster, Van Dyck, Linssen, Kneiszel, Clancy, Moynihan, Blom, Schadewald, Lund, Becker

Late Arrivals: Zima (7:04pm), Ballard (7:35pm), Nicholson (7:40pm), and Campbell (7:45pm)

Total Present: 26

No. 1 -- ADOPTION OF AGENDA.

Chairman Moynihan amended the agenda by moving item #11g after item #1, moving item #8b after item #2, and striking items #12a-12c from the agenda.

A motion was made by Supervisor Evans and seconded by Supervisor Becker **“to adopt the agenda as amended.”** Voice vote taken. Motion carried unanimously.

(Item #11g was taken out of order at this time.)

Planning, Development & Transportation Committee

No. 11g -- ORDINANCE TO AMEND SECTION 25.09 OF CHAPTER 25 OF THE BROWN COUNTY CODE OF ORDINANCES ENTITLED, “CONVEYORS OF PUBLIC TRANSPORTATION.”

A motion was made by Supervisor Buckley and seconded by Supervisor Erickson **“to refer back to Planning, Development and Transportation Committee.”** Voice vote taken. Motion carried unanimously with no abstentions.

No. 2 -- COMMENTS FROM THE PUBLIC:

- a) Must be limited to items not on the agenda.
- b) State name and address for the record.
- c) Comments will be limited to five minutes.
- d) The Board's role is to listen and not discuss comments nor take action on those comments at this meeting.

In total, fourteen individuals addressed the Board during Comments from the Public.

Of those, Patrick Doherty, 1680 Lake Largo Drive, Green Bay, and Joel Diny, 3283 Peterson Road, Green Bay, voiced their opposition to the proposed Brown County .5% sales tax increase.

Mike Hartmann, 17023 County Road F, Kiel, spoke in opposition of the proposed Airport taxi fee, "Ordinance amending section 25.09 of Chapter 25 of the Brown County Code of Ordinances, Entitled "Conveyors of Public Transportation."

Eleven individuals addressed the Board and spoke in favor of the proposed .5% sales tax and room tax extension. The citizens in favor of the proposal were: Don Socha, 1125 Raleigh St., Green Bay; Brad Toll, 1246 Prairie Falcon Trl, Green Bay; Rick Beverstein, 5261 Edgewater Beach Rd., Green Bay; Mary Kardoskee, 2155 Holmgren Way, Ashwaubenon; Kathy Pletcher, 515 Sunset Ct., Denmark; Ron Antonneau, 3589 Nicolet Dr., Green Bay; Kor Xiong, 3129 N. Lawe St. Apt. 5, Appleton; Jayme Sellen, 2167 Ryan Rd., De Pere; Kramer Rock, 2756 Chaska Ct., Howard; John Klasen, 807 Quidditch Ct., De Pere; and Susan Finco, 674 E River Dr., De Pere (Submitted support letter via Supervisor Kneiszel).

(Item #8b was taken out of order at this time.)

No. 8b -- REPORT BY BOARD CHAIRMAN.

Chairman Moynihan addressed the Board and spoke in favor of the proposed .5% sales tax. Two aspects of the proposal that Mr. Moynihan highlighted were the 72 months sunset clause and the guarantee that the revenue will be spent only on Capital Projects.

Mr. Moynihan continued that not only would the proposed sales tax lead to a \$70 million reduction in debt but would also include a \$6 million reduction in property taxes.

Chairman Moynihan acknowledged that the approval of the proposed ordinance would allow for necessary projects such as jail expansion, library improvements, rehabilitation of the Brown County Fairgrounds, and convention center construction. What's more, 80% of the funding for the new entertainment facility would come from outside visitors via the room tax extension.

Chairman Moynihan assured everyone that this proposal was not being fast-tracked and was properly vetted while also stating that any referendum would result in unnecessary spending on a non-binding result.

No. 3 -- COMMITTEE OF THE WHOLE.

No. 3a -- COUNTY EXECUTIVE'S DEBT REDUCTION INFRASTRUCTURE AND PROPERTY TAX RELIEF PLAN

No. 3b -- **ORDINANCE CREATING CHAPTER 9 OF THE BROWN COUNTY CODE ENTITLED, "BROWN COUNTY SALES AND USE TAX."**

THE BROWN COUNTY BOARD OF SUPERVISORS DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 9 of the Brown County Code of Ordinances entitled "BROWN COUNTY SALES AND USE TAX" is hereby created to read:

CHAPTER 9

BROWN COUNTY SALES AND USE TAX

9.01 AUTHORITY. This Ordinance is enacted under the authority of Subchapter V of Chapter 77 of the Wisconsin Statutes, and acts amendatory thereto.

9.02 PURPOSE. This Ordinance enacts a temporary 72 month, 0.5 percent Brown County sales and use tax, revenues from which: 1) **Shall not be utilized** to fund any operating expenses other than lease payments associated with the below mentioned specific capital projects; and 2) **Shall be utilized only** to reduce the property tax levy by funding the below listed specific capital projects, as well as funding said specific capital projects' associated costs as deemed appropriate by Brown County administration, in the below listed estimated amounts:

- (1) Expo Hall Project – \$15,000,000.00;
- (2) Infrastructure, Roads and Facilities Projects – \$60,000,000.00;
- (3) Jail and Mental Health Projects - \$20,000,000.00;
- (4) Library Project – \$20,000,000.00;
- (5) Maintenance at Resch Expo Center Project – \$10,000,000.00;
- (6) Medical Examiner and Public Safety Projects – \$10,000,000.00;
- (7) Museum Project – \$1,000,000.00;
- (8) Parks and Fairgrounds Project – \$6,000,000.00; and
- (9) Stem Research Center Project – \$5,000,000.00.

***9.03 MILL RATE FREEZE.** While this temporary sales and use tax Ordinance is in effect, the Brown County Mill Rate shall not exceed the 2018 Brown County Mill Rate. If the Brown County Mill Rate does exceed the 2018 Brown County Mill Rate during the 72 months that this temporary 0.5 percent Brown County sales and use tax is in effect, then this sales and use tax shall sunset on December 31 of the year the Brown County Mill Rate exceeds the 2018 Brown County Mill Rate.

9.04 EFFECTIVE COMMENCEMENT AND SUNSET DATES. Subject to the following contingencies being met **on or before August 15, 2017**, this Ordinance shall take effect on January 1, 2018, and shall sunset 72 months thereafter, unless during said 72 month period any general obligation debt, excluding refunding bonds, is issued by Brown County in which case this

Ordinance shall sunset on December 31 of the year any general obligation debt, excluding refunding bonds, is issued:

- 1) Contingency 1 (to be met on or before August 15, 2017): The **Village of Allouez**, the **Village of Ashwaubenon**, the **Village of Bellevue**, the **Village of Howard**, the **Village of Suamico**, the **City of De Pere**, and the **City of Green Bay** shall all take such municipal acts as are necessary, to the satisfaction of Brown County, authorizing such municipality to execute and deliver an amendment or supplement to, or restatement of, the Cooperation Agreement dated as of June 1, 1999, as previously amended (including by the Agreement Between Brown County and City of Green Bay for Surplus Net Room Taxes for KI Expansion, effective June 30, 2012, as amended), among such municipalities and Brown County (the "Cooperation Agreement"), which shall contain the following provisions:
 - (a) The expiration date of the Cooperation Agreement shall be extended to the date of final payment of the bonds or other indebtedness issued to finance the Expo Hall Project (including any such bonds or indebtedness issued to refinance or refund previously issued bonds or indebtedness for such purpose) (the "Expo Hall Bonds") and;
 - (b) Net Room Tax Revenue remaining after debt service payments are made for the bonds for the Resch Center Project and the KI Convention Center, including bonds which financed the KI Expansion Project, shall be dedicated to the payment of debt service on the Expo Hall Bonds.
- 2) Contingency 2 (to be met on or before August 15, 2017): PMI Entertainment Group, Inc. shall agree in writing to reopen and renegotiate its contract with Brown County.

Section 2. Subject to the contingencies stated in Section 9.04, above, being met on or prior to August 15, 2017, this Ordinance shall take effect on January 1, 2018, and the County Clerk shall deliver a certified copy of this Ordinance to the Wisconsin Secretary of Revenue on or before September 1, 2017 (at least 120 days prior to January 1, 2018).

**As amended by the Brown County Board of Supervisors at the May 17, 2017 meeting.*

Respectfully submitted,
COMMITTEE OF THE WHOLE

/s/ Troy Streckenbach 05/23/17
COUNTY EXECUTIVE (Date)

/s/ Sandra L. Juno 05/19/17
COUNTY CLERK (Date)

/s/ Patrick W. Moynihan 05/24/17
COUNTY BOARD CHAIR (Date)

Authored by: Corporation Counsel

Final Draft Approved by: Corporation Counsel

Fiscal Impact: This ordinance does not require an appropriation from the General Fund.

A motion was made by Supervisor Sieber and seconded by Supervisor Schadewald **“to refer back to June Executive Committee for referendum language and fiscal note regarding creating Chapter 9 of the Brown County Code of Ordinances as well as sending to each committee for details of the distribution of proposed funds.”**

A motion was then made by Supervisor Buckley and seconded by Supervisor Evans **“to approve item #3b as presented.”** Prior to a vote being taken, legal counsel was given by David Hemery, Corporation Counsel, clarifying that this motion was not permissible as the motion of referral takes precedence. As such, Supervisor Buckley withdrew his motion.

Following a lengthy discussion, a Roll Call vote was taken on Supervisor Sieber’s original motion of referral. Roll Call #3b(1):

Ayes: Sieber, De Wane, Nicholson, Erickson, Zima, Kaster, Schadewald, Lund

Nays: Hoyer, Gruszynski, Lefebvre, Evans, Vander Leest, Buckley, Landwehr, Dantine, Brusky, Ballard, Van Dyck, Linssen, Kneiszel, Clancy, Campbell, Moynihan, Blom, Becker

Total Ayes: 8 Total Nays: 18

Motion Failed.

A motion was made by Supervisor Schadewald and seconded by Supervisor Vander Leest **“to amend the Ordinance to create Chap. 9 of the Brown County Code of Ordinances entitled, “Brown County Sales and Use Tax” by adding the following Mill Rate freeze language, ‘9.03 MILL RATE FREEZE. While this temporary sales and use tax Ordinance is in effect, the Brown County Mill Rate shall not exceed the 2018 Brown County Mill Rate. If the Brown County Mill Rate does exceed the 2018 Brown County Mill Rate during the 72 months that this temporary 0.5 percent Brown County sales and use tax is in effect, then this sales and use tax shall sunset on December 31 of the year the Brown County Mill Rate exceeds the 2018 Brown County Mill Rate’.”** Following discussion regarding the validity and future legality of this motion, a Roll Call vote was taken. Roll Call #3b(2):

Ayes: Sieber, Nicholson, Gruszynski, Lefebvre, Erickson, Zima, Vander Leest, Buckley, Landwehr, Dantine, Brusky, Ballard, Kaster, Van Dyck, Linssen, Clancy, Campbell, Moynihan, Blom, Schadewald, Lund, Becker

Nays: De Wane, Hoyer, Evans, Kneiszel

Total Ayes: 22 Total Nays: 4

Motion Carried.

A motion was made by Supervisor Nicholson **“to exempt all Brown County residents from the .5% sales tax.”** Chairman Moynihan, with direction from Corporation Counsel, informed Supervisor Nicholson that this motion was not valid and therefore would not be accepted. At this time, a motion was made by Supervisor Nicholson and seconded by Supervisor Zima **“to Challenge the Chair.”** Roll Call vote taken. Roll Call #3b(3):

Ayes: De Wane, Nicholson, Zima

Nays: Sieber, Hoyer, Gruszynski, Lefebvre, Erickson, Evans, Vander Leest, Buckley, Landwehr, Dantine, Brusky, Ballard, Kaster, Van Dyck, Linssen, Kneiszel, Clancy, Campbell, Blom, Schadewald, Lund, Becker

Total Ayes: 3 Total Nays: 22

Chairman Moynihan was not allowed to vote on this issue.

Motion Failed.

A motion was made by Supervisor Buckley and seconded by Supervisor Evans **“to approve the Ordinance Creating Chapter 9 of the Brown County Code of Ordinances Entitled “Brown County Sales and Use Tax” as amended.”** Roll Call vote taken. Roll Call #3b(4):

Ayes: Sieber, De Wane, Hoyer, Gruszynski, Lefebvre, Erickson, Evans, Vander Leest, Buckley, Landwehr, Dantine, Brusky, Ballard, Van Dyck, Linssen, Kneiszel, Clancy, Campbell, Moynihan, Blom, Schadewald, Lund, Becker

Nays: Nicholson, Zima, Kaster

Total Ayes: 23 Total Nays: 3

Motion Carried.

At this time, a motion was made by Supervisor Zima and seconded by Supervisor Evans **“to take a 5 minute recess.”** Voice vote taken. Motion carried.

No. 4 -- APPROVAL OF MINUTES OF APRIL 19, 2017.

A motion was made by Supervisor Hoyer and seconded by Supervisor Lefebvre **“to approve.”** Voice vote taken. Motion carried unanimously.

No. 5 -- ANNOUNCEMENTS OF SUPERVISORS. None.

No. 6 -- COMMUNICATIONS. None.

LATE COMMUNICATIONS:

No. 6a -- FROM SUPERVISOR NICHOLSON: REVIEW THE POSSIBILITY OF COMBINING THE GB HOUSING AUTHORITY AND BROWN COUNTY HOUSING AUTHORITY WITH POSSIBLE ACTION TO SEEK ADVANTAGES AND DISADVANTAGES OF THE MERGE.

Referred to Administration Committee.

No. 6b -- FROM SUPERVISOR LEFEBVRE: TO PD&T COMMITTEE REGARDING BROWN COUNTY’S FUTURE LANDFILL SITE IN LOCATION TO THE HEADWATER OF THE EAST RIVER.

Referred to Planning, Development and Transportation Committee.

No. 6c -- FROM SUPERVISOR BRUSKY: I AM REQUESTING AN ADJUSTMENT IN HOURLY WAGES FOR THOSE BROWN COUNTY EMPLOYEES WHO, BECAUSE THEY WERE INITIALLY HIRED AT A LOWER STARTING PAY, NOW MAKE LESS THAN EMPLOYEES WITH LESS EXPERIENCE WHO WERE HIRED AFTER THEM. I AM PARTICULARLY REFERRING TO THOSE HIRED IN 2013 – OR OTHER PERTINENT YEARS.

Referred to Administration, Executive, and Public Safety Committees.

No. 7 -- APPOINTMENTS BY COUNTY EXECUTIVE.



2018 ANNUAL BUDGET

Proposed

Brown County, WI

2018 ANNUAL BUDGET

FOR

BROWN COUNTY



Submitted By
County Executive
Troy Streckenbach

Brown County Board of Supervisors

Patrick W. Moynihan, Jr. - Chair

Thomas Lund - Vice-Chair

Paul Ballard
Mark Becker
Jamie Blom
Joan Brusky
Patrick Buckley
Corrie Campbell
Bill Clancy
Norbert Dantine, Jr.

Thomas DeWane
Bernie Erickson
Patrick Evans
Staush Gruszynski
Erik Hoyer
Dave Kaster
James Kneiszel
Dave Landwehr

Kathy Lefebvre
Aaron Linssen
Andy Nicholson
Richard Schadewald
Tom Sieber
John Van Dyck
John Vander Leest
Guy Zima

FUND DESCRIPTIONS

The County organizes its financial activity by funds with separate financial statements for each fund. Funds are organized as major or non-major within the governmental and proprietary statements. A fund is considered major if it is the primary operating fund of the County, or if it meets the following criteria:

- a. Total assets, liabilities, revenues or expenditures/expenses of that individual governmental or enterprise fund are at least 10 percent of the corresponding total for all funds of that category or type, and;
- b. The same element of the individual governmental or enterprise fund that met the 10 percent test is at least 5 percent of the corresponding total for all governmental and enterprise funds combined.
- c. In addition, any other governmental or enterprise fund that the County believes is particularly important to financial statement users may be reported as a major fund.

The County has three major governmental funds: General Fund, Community Services Fund, and Debt Service Fund. In addition, the County has four major proprietary funds: Community Treatment Center, Airport, Port and Resource Recovery, and Highway.

GENERAL FUND (Major Fund)

To account for activities related to general operations of the County. This fund accounts for resources traditionally associated with governments which are not required to be accounted for in another fund.

SPECIAL REVENUE FUNDS

To account for the proceeds of specific resources (other than expendable trust or major capital projects) that are legally restricted to expenditures for specific purposes.

Child Support – to account for operations of the Child Support program. Financing is provided primarily by state and federal grants.

Community Services (Major Fund) – to account for the operations of the Community Services and Economic Support Division of the Human Services Department. Financing is provided by state grants and a portion of the local property tax levy.

Convention Center/Arena – to account for the collection of room taxes from participating municipalities and the payments to the Village of Ashwaubenon CDA and City of Green Bay RDA for debt service on the Arena and Convention Center, respectively.

County Roads and Bridges – to account for the maintenance and construction of the County's roads and bridges. Financing is provided by a portion of the local property tax levy and by state and federal aids.

County Sales Tax – to account for the collection and use of .05% County sales tax imposed for capital improvements.

Economic Development Revolving Loan – to account for the activity of the Community Development Block Grant Small Cities Program. Financing is provided by a federal grant.

Fire Safety – to account for contributions and donations restricted to fire investigation and fire safety education.

Housing Revolving Loan – to account for the activity of the Regional Community Development Block Grant Housing Program and the Brown County Housing Revolving Loan Program. Financing is provided by a federal grant and loan repayments.

Jail Inmate Welfare – to account for proceeds from inmate sales commissions used specifically to purchase various items and services for the direct benefit of Jail inmates.

Library: Fredricka Crane – to account for contributions from private sources restricted to various library purposes.

Library: Lester Wood – to account for contributions from private sources restricted to various library purposes.

SCHEDULE OF INDIVIDUAL CAPITAL PROJECT REVENUES, EXPENDITURES AND FUND BALANCES

Project	Beginning Balance	Revenues			Expenditures		Ending Balance
	01/01/18	Sales Tax Transfer In	Property Taxes	Other Revenues	Capital Outlay	Transfer Out	12/31/18
Bonded: (a)							
Land Information & Tax Collection System	309,598	-	-	500	310,098	-	-
Public Safety Communications Upgrades: Integrated Computer Aided Dispatch and 9-1-1 Phone System	535,382	-	-	874	536,256	-	-
Sheriff's Department Projects: Jail Video Surveillance/Work Release Center Intercom System	219,523	-	-	303	219,826	-	-
Subtotal - Bonded	1,064,503	-	-	1,677	1,066,180	-	-
Proposed: (b)							
Highway Projects	-	9,264,687	1,367,053	1,007,331	11,639,071	-	-
Facility Building Upgrades	-	250,000	-	-	250,000	-	-
Jail Projects: Sheriff Jail Pods	-	1,071,258	-	-	1,071,258	-	-
Library Improvements:							
Library Branch Expansion/Relocation	-	1,000,000	-	-	1,000,000	-	-
Medical Examiner Facility	-	528,120	-	-	528,120	-	-
Museum Permanent Exhibit	-	500,000	-	-	500,000	-	-
Parks Improvements	-	500,000	-	270,000	770,000	-	-
Brown County Research and Business Park: STEM Innovation Center	249,250	4,200,000	-	10,000,000	7,500,000	-	6,949,250
Public Safety Communications Upgrades: 9-1-1 & TS SDC UPS Replacement	-	581,000	-	-	581,000	-	-
Veteran's Memorial Complex: Stadium Sales Tax Refund	4,519,159	-	-	9,066	4,505,474	-	22,751
Subtotal - Proposed	4,768,409	17,895,065	1,367,053	11,286,397	28,344,923	-	6,972,001
Other: (c)							
Asset Maintenance	359,658	-	-	3,841	100,000	-	263,499
Brown County Research and Business Park: Other District Attorney Evidence Distribution	521,980	-	-	7,234	-	-	529,214
Facility Building Upgrades: Veteran's Memorial Complex Reserve	222,382	-	-	-	-	-	222,382
Financial Management System	270,130	-	-	-	183,662	86,468	-
Law Records Management System (LRMS)	71,732	-	-	-	71,732	-	-
Time and Attendance System	104,440	-	-	43,234	104,440	43,234	-
Veteran's Memorial Complex: Other	776,263	-	49,565	431,697	49,995	-	1,207,530
Subtotal - Other	2,576,585	-	49,565	486,006	759,829	129,702	2,222,625
Total	8,409,497	17,895,065	1,416,618	11,774,080	30,170,932	129,702	9,194,626

(a) Projects that have been through the Project Resolution Approval process and for which financing has been secured and approved.

(b) Projects that are being submitted to the County Board for its consideration and action.

(c) Projects previously approved and not funded by bond proceeds.

2018 PROPOSED SALES TAX PROJECTS

Total County sales tax revenue requirements for 2018 proposed capital projects equal \$17,895,065. Complete detail for these proposed projects follows this synopsis.

Department	Annual Cost	Requested Sales Tax	Total Other
Medical Examiner			
1 Medical Examiner Facility - Architecture/Project Mgmt	528,120	528,120	-
Public Safety			
2 PSC 911 and Technology Services SDC UPS Replacement	581,000	581,000	-
Sheriff			
3 Jail Pods - Architecture/Project Mgmt	1,071,258	1,071,258	-
Planning			
4 STEM Innovation Center	7,500,000	4,200,000	3,300,000
Public Works (Facilities)			
5 Building Improvements	250,000	250,000	-
Public Works (Highway)			
6 CTH G (STH 96 to CTH V) - Surface Maintenance	1,850,000	1,850,000	-
7 CTH T (CTH N to RR) - Recondition	668,000	668,000	-
8 CTH T (CTH KB to Blahnik Rd) - Recondition	2,540,000	2,200,187	339,813
9 CTH PP (STH 96 to Shirley Road) - Recondition	1,237,500	1,237,500	-
10 CTH T (Pine Street to Highridge Street) - 6' Culvert Replacement	303,000	303,000	-
11 CTH ZZ (Masse Circle to STH 57) - Reconstruction	2,756,000	2,756,000	-
12 CTH XX (Bridge Over East River) - Bridge Maintenance	250,000	250,000	-
Subtotal Public Works (Highway)	9,604,500	9,264,687	339,813
Museum			
13 Permanent Exhibit	500,000	500,000	-
Parks			
14 Fairgrounds Development	210,000	210,000	-
15 Duck Creek Shoreline Stabilization	540,000	270,000	270,000
16 Barkhausen Improvements	20,000	20,000	-
Subtotal Parks	770,000	500,000	270,000
Library			
17 Library Branch Expansion/Relocation	1,000,000	1,000,000	-
TOTALS	21,804,878	17,895,065	3,909,813

COUNTY SALES TAX 2018 BUDGET

Account Description	2016 Actual Amount	2017 6-Month Actual Amount	2017 Estimated Amount	2017 Amended Budget	2018 Executive
<i>Fund: 299 - County Sales Tax</i>					
<u>REVENUES</u>					
Sales Tax	-	-	-	-	22,458,333
Interest	-	-	-	-	10,850
REVENUES TOTAL	-	-	-	-	22,469,183
<u>EXPENSES</u>					
Transfer out	-	-	-	-	17,895,065
EXPENSES TOTAL	-	-	-	-	17,895,065
REVENUE GRAND TOTALS:	-	-	-	-	22,469,183
EXPENSE GRAND TOTALS:	-	-	-	-	17,895,065
NET GRAND TOTALS:	-	-	-	-	4,574,118

EXHIBIT E

PROCEEDINGS OF THE BROWN COUNTY BOARD OF SUPERVISORS **NOVEMBER 1, 2017**

Pursuant to Section 19.84 and 59.14, Wis. Stats., notice is hereby given to the public that the REGULAR & BUDGET meeting of the **BROWN COUNTY BOARD OF SUPERVISORS** was held on **Wednesday, November 1, 2017 at 9:00 a.m.**, in the Legislative Room 203, 100 North Jefferson Street, Green Bay, Wisconsin.

The following matters will be considered:

Call to order at 9:00a.m.

Invocation.

Pledge of Allegiance.

Opening Roll Call

Present: Sieber, De Wane (9:28am), Nicholson, Hoyer, Gruszynski, Lefebvre, Erickson, Zima, Evans, Vander Leest, Buckley (9:02am), Landwehr, Dantine, Brusky, Ballard, Kaster, Van Dyck, Linssen, Kneiszel, Clancy, Campbell (9:04am), Moynihan, Blom, Schadewald, Lund, Becker (9:11am).

Total Present: 26 Total Excused: 0

No. 1 -- ADOPTION OF AGENDA.

Chairman Moynihan amended the agenda by moving item No. 7b (Report of Board Chairman) after item No. 1.

A motion was made by Vice Chair Lund and seconded by Supervisor Nicholson **“to adopt the agenda as amended.”** Voice vote taken. Motion carried unanimously.

(No. 7b was taken out of order at this time.)

No. 7b -- REPORT BY COUNTY BOARD CHAIRMAN.

Chairman Moynihan reminded Supervisors that if needed, the Veto Session for the budget resolutions will be held November 13th at 6:00pm.

Chairman Moynihan advised Supervisors that Budgetary Amendment Proposal Request sheets were placed on their desks if they need them today.

Chairman Moynihan also reminded Supervisors about the deadlines for filing their candidacy or non-candidacy paperwork as well as the County Clerk having candidacy paperwork packets today if any Supervisor wanted one.

Chairman Moynihan stated the Public Hearing on the budget meeting will begin at 9:30am today.

Respectfully submitted,
HEALTH AND HUMAN SERVICES
DEPARTMENT

Authored by Human Resources
Approved by Corporation Counsel

A motion was made by Supervisor De Wane and seconded by Supervisor Becker **“to adopt.”**
Voice vote taken. Motion carried unanimously with no abstentions.

Approved by: /s/ Troy Streckenbach Date: 11/07/2017

Internal Auditor Dan Process informed the Board at this time that the current mill rate and tax levy for 2018, based on the increase of \$350,842 the Board made to the Executive’s proposed budget, were 4.5593 and \$90,636,735 respectively.

Following, a motion was made by Supervisor Evans and seconded by Supervisor Becker **“to add \$40,000 to the Community Partnership for children for the Healthy Families Program. Put in as Purchase Services.”** Roll call vote taken. Roll call:

Ayes: Sieber, De Wane, Hoyer, Gruszynski, Lefebvre, Erickson, Zima, Evans, Vander Leest, Dantine, Brusky, Ballard, Clancy, Campbell, Moynihan, Schadewald, Lund, Becker

Nays: Nicholson, Buckley, Landwehr, Kaster, Van Dyck, Linssen, Kneiszel, Blom

Total Ayes: 18 Total Nays: 8

Motion carried.

No. 14 -- RESOLUTION RE: ESTABLISHING THE BROWN COUNTY BUDGET FOR CALENDAR YEAR 2018

TO THE HONORABLE CHAIRMAN AND MEMBERS
OF THE BROWN COUNTY BOARD OF SUPERVISORS

Ladies & Gentlemen:

BE IT RESOLVED, that the following sums of money be raised for the ensuing year:

School for Children with Disabilities	2,949,682
Health	2,164,909
County Aid Bridges (Section 82.08, Wis. Stats.)	141,000
Debt Service Fund	14,086,908
All Other County Taxes	<u>71,334,236</u>
PROPERTY TAX LEVY	90,676,735

BE IT FURTHER RESOLVED, that the County shall apportion the tax for the school for Children with Disabilities on all districts participating; and

BE IT FURTHER RESOLVED, that the County shall apportion the tax for the Health Department on all districts participating; and

BE IT FURTHER RESOLVED, that the County shall apportion the tax for bridges under Section 82.08, Wis. Stats., on the taxable property of the taxing districts participating; and

BE IT FURTHER RESOLVED, that the County shall enter in the Tax Apportionment, State Special Charges for Forestry Mill Tax, Section 70.58, Wis. Stats., in the amount of \$0; and

BE IT FURTHER RESOLVED, that the County shall enter in the Tax Apportionment the 20% Highway County Trunk Bridge assessments as authorized legal taxes against any district in the County, under Section 83.03 (2), Wis. Stats.; and

BE IT FURTHER RESOLVED, that the budgeted appropriations for purposes of Section 65.90, Wis. Stats., are attached hereto as Exhibit A, and the detailed budget for purposes of Section 59.17 (5), Wis. Stats., is the document of which this is part; and

BE IT FURTHER RESOLVED, that the Director of Administration is authorized to make any technical corrections to the budget that are necessary.

A motion was made by Vice Chair Lund and seconded by Supervisor Becker **“to adopt the Brown County Budget for Calendar Year 2018 as amended”**. Vote taken. Roll Call #14(1):

Ayes: Sieber, De Wane, Hoyer, Gruszynski, Erickson, Zima, Evans, Vander Leest, Buckley, Landwehr, Dantine, Brusky, Ballard, Kaster, Linssen, Kneiszel, Clancy, Campbell, Moynihan, Blom, Schadewald, Lund, Becker

Nays: Nicholson, Lefebvre, Van Dyck

Total Ayes: 23 Total Nays: 3

Motion carried **“to adopt the Brown County Budget for Calendar Year 2018 as amended.”**

Approved by: /s/ Troy Streckenbach Date: 11/07/2017

No. 15 -- SUCH OTHER MATTERS AS AUTHORIZED BY LAW. NONE.

Late Communications:

No. 15a -- FROM SUPERVISOR LEFEBVRE: I REQUEST THE HEALTH DEPARTMENT FIND OUT THE FULL PROBLEM OF THE RAT ISSUE AND DETERMINE COST, FEASIBILITY, ETC. OF THIS ISSUE. I DO FEEL THE COUNTY HEALTH DEPARTMENT SHOULD DEAL WITH THIS.

Refer to Health and Human Services Committee

Brown County
Levy Limit Worksheet
County Executive Submitted Budget

EXHIBIT F

Line	Description	Rate	Allowable 2016 Payable 2017 (Budget Yr 2017)	Levy Limit Worksheet Allowable 2017 Payable 2018 Levy (Budget Year 2018)
<u>As per Apportionment Sheets</u>				
27	Total Net County Taxes		86,661,972.00 Actual	
5	Charitable and penal		(8,584.36) Actual	
12	County bridge aid (sec. 82.08(2), Wis. Stats.)		(141,000.00) Actual	
22	Children with Disabilities Education Boards		(2,802,612.00) Actual	
	Countywide tax levy applicable to net new construction levy limits		83,709,775.64 Actual	
<u>Determination of Allowable Levy</u>				
1	Prior year payable actual county levy			83,709,776
3	Exclude levy for new GO debt authorized after 07-01-2005		As per prior year worksheet	11,043,515
4	Prior year payable adjusted actual county levy			72,666,261
5a	Terminated TID %	0.000%		0
5b	0.00% growth plus terminated TID % applied to prior year adjusted actual levy			72,666,261
6a	Net new construction %	1.872%		1,360,312
6b	Net new construction % + terminated TID % applied to prior year adjusted actual levy			74,026,573
7	Current year levy limit before adjustments			74,026,573
8	Adjustments from page 2, line O		Actual	13,995,960
9	Current year payable subsequent year allowable levy			88,022,533
<u>Adjustment for Previous Year's Unused Levy</u>				
	Previous year's allowable levy included unused levy adjustment			
	Less previous year's unused levy adjustment			
1	Previous year's allowable levy			83,709,776
2	Previous year's actual levy			83,709,776
3	Previous year's unused levy			0
4	Previous year's actual levy * .015	0.015	83,709,776	1,255,647
5	Allowable increase (lessor of line 3 or line 4)			0
<u>Adjustments to Levy Limit</u>				
A	Increase for unused levy from previous year (see line 5 above)	Add		0
B	Decrease in current year debt service for debt authorized prior to 07-01-2005	Subtract	Estimated	0
C	Increase in current year debt service for debt authorized prior to 07-01-2005	Add		
E	Debt service for GO debt issued after 07-01-2005	Add	dated 8-1-0-17	13,995,960
O	Total adjustments			13,995,960
a	Was not specifically approved of the adjustment by 75% majority of the County Board as per sec. 66.0602(3)(f)3.a Wis. Stats.			
b	X:\Accounting & Finance\Budget\Annual Budget\2017\Debt\Debt Bond Payments for Levy Limits 2017.xls			
	Total allowable levy as per above			88,022,533
	Charitable and penal charges		As of 8-31-17	1,792
	County Bridge Aids		As of 8-31-17	141,000
	Children with Disabilities Education Board		As of 9-15-17	2,949,682
	Grand total allowable levy			91,115,007
	Executive proposed levy as of 9-13-17			90,285,893
	(Under) over levy limit			(829,114)



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

EXHIBIT G

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

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

OAG 1-98

May 5, 1998

Mr. Dennis E. Kenealy
Corporation Counsel
Ozaukee County
Post Office Box 994
Port Washington, WI 53074-0994

Dear Mr. Kenealy:

You ask, in effect, how funds received from a county sales and use tax imposed under section 77.70, Stats., may be budgeted by the county board.

In my opinion, such funds may be budgeted to reduce the amount of the overall countywide property tax levy or to defray the cost of any item which can be funded by a countywide property tax.

Section 77.70 provides in part:

Any county desiring to impose county sales and use taxes under this subchapter may do so by the adoption of an ordinance, stating its purpose and referring to this subchapter. The county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety as provided in this subchapter.

Prior to 1985, counties had the authority to impose sales and use taxes, but the Wisconsin Department of Revenue was required to distribute all of the net proceeds of such taxes to towns, cities and villages within the county imposing the tax. See sec. 77.70, Stats. (1983) and sec. 77.76(4), Stats. (1983). In 1971, the Attorney General opined that a county board could not require by ordinance that the net proceeds of a county sales and use tax be used solely to reduce property taxes levied by the various taxing jurisdictions but must instead be distributed to towns, cities and villages with no conditions attached. See 60 Op. Att'y Gen. 387 (1971). Prior to 1985 few, if any, counties imposed a sales and use tax, presumably because none of the proceeds of the tax could be used by county government and because counties could not control

how the net proceeds of such taxes would be used by other local units of government within the county.

In 1985, the Legislature amended the statute to allow county governments to retain the net proceeds of the sales and use tax, if those proceeds are used "only for the purpose of directly reducing the property tax levy." See sec. 77.70, Stats. (1985), as amended by 1985 Wisconsin Act 41. Although many counties have enacted sales and use taxes since 1985, I am aware of no litigation concerning the meaning of the quoted restriction on the use of county sales and use tax revenues since the passage of 1985 Wisconsin Act 41. It is likely that there has been no litigation because the property tax is almost the only source available to counties to raise revenues of their own accord.

Some counties illustrate property tax reductions by showing the receipt of sales and use tax revenues on individual property tax bills. Counties, however, lack statutory authority to implement a direct system of tax credits to individual property owners through distribution of property tax bills, the contents of which are specified by the Department of Revenue.

The countywide property tax levy is usually shown as a single line revenue source in the budget. The net proceeds of the sales and use tax are also a revenue item. The countywide property tax levy is clearly reduced to the extent that the net proceeds of the sales and use tax are shown as a budget item which is subtracted directly from the total property tax before determining the net property tax that must be levied. That budgeting method directly reduces the amount of countywide property tax which must be paid by each taxpayer.

Some counties have also budgeted the net proceeds of the sales and use tax as a revenue source used to offset the cost of individual items contained in the county budget. The same amount of countywide property tax reduction occurs whether the county board chooses to budget revenues from net proceeds of the sales and use tax as a reduction in the overall countywide property tax levy or as an offset against a portion of the costs of specific items which can be funded by the countywide property tax. With respect to the funding of specific items, I have considered the possibility that the statute could be construed to require that the net proceeds of the sales and use tax be used only to defray the cost of existing projects, as opposed to new items. A statute, however, should be construed so as to avoid unreasonable and absurd results. Estate of Evans, 28 Wis. 2d 97, 101, 135 N.W.2d 832 (1965). It would be unreasonable to construe the statutory restriction so that counties which had already started certain projects could use sales and use tax revenues to complete them while other counties contemplating the initiation of similar projects could not use

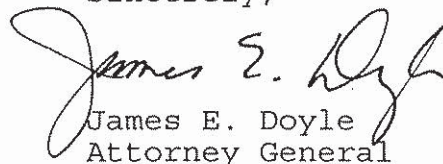
Mr. Dennis E. Kenealy
Page 3

sales and use tax revenues to fund them at all. Since there is no such county-by-county limiting language in the statute, it is my opinion that the extent of the authority to use sales and use tax revenues in connection with individual budget items does not vary from county to county. Counties may therefore also budget the net proceeds of the sales and use tax as an offset against the cost of any individual budgetary item which can be funded by the countywide property tax.

I recognize that, if possible, meaning should be ascribed to the word "directly" in section 77.70. Ordinarily, statutory language should not be rendered superfluous. State ex rel. Taylor v. Linse, 161 Wis. 2d 719, 723, 469 N.W.2d 201 (Ct. App. 1991). It is a basic principle of statutory construction that terms are ordinarily construed by our courts according to their ordinary and accepted meaning, by resort to a recognized dictionary, if necessary. State v. McCoy, 143 Wis. 2d 274, 287, 421 N.W.2d 107 (1988). Insofar as is relevant to your inquiry, Webster's Third New International Dictionary 641 (1986) defines the term "directly" as "without any intermediate step." The term "directly" has meaning in those instances where budgetary items cannot be funded through a countywide property tax. For example, under section 43.64(2), property taxpayers in certain taxation districts are exempt from any property tax levy for funding public library service. Similarly, under section 251.08, property taxpayers in certain taxation districts are exempt from any property tax levy for funding county health departments. Sales and use tax revenues may not be budgeted as a revenue item used to offset the cost of any specific budget item which cannot be funded through a countywide property tax. Although any revenue source frees up other funds to be used for other budgetary purposes, the budgeting of sales and use tax proceeds to defray the cost of items which cannot be funded by a countywide property tax constitutes indirect rather than direct property tax relief.

I, therefore, conclude that funds received from a county sales and use tax under section 77.70 may be budgeted by the county board to reduce the amount of the countywide property tax levy or to defray the cost of any budget item which can be funded by a countywide property tax.

Sincerely,


James E. Doyle
Attorney General

JED:FTC:cla

Mr. Dennis E. Kenealy
Page 4

CAPTION:

Funds received from a county sales and use tax under section 77.70, Stats., may be budgeted by the county board to reduce the amount of the countywide property tax levy or to defray the cost of any item which can be funded by a countywide property tax.