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# Court Upholds Brown County Sales and Use Tax

Article By:

Litigation and Risk Management

In a victory for counties across Wisconsin, the Brown County Circuit Court recently issued a decision upholding Brown County's 2018 imposition of a county sales and use tax. The Court's decision follows years of litigation between Brown County and the Brown County Taxpayers Association ("BCTA"). BCTA claimed that the County's ordinance violated the requirements of the county sales and use tax authorizing statute (the "Sales Tax Statute")[1] because it failed to provide that the revenues from the tax would provide a direct dollar-for-dollar offset against the County's property tax levy. The Court concluded, consistent with Brown County's position, that BCTA's claim that the Sales Tax Statute requires a dollar-for-dollar offset fails. While a dollar-for-dollar reduction of a county's property tax levy is one permissible use for county sales tax revenue, it is not the only permissible use. Importantly, county sales tax revenue may also generally be used to pay for any purposes that could otherwise be funded with property tax revenue. Spending county sales tax revenue for these purposes allows counties to avoid both immediate property tax increases and also potential future increases to the property tax levy (*e.g.*, in order to pay for additional debt service due to increased borrowing by the county to continue its provision of essential services). This *Legal Update* will provide a brief overview of the Court's decision.

## The Court's Decision

The Sales Tax Statute permits a count to impose a sales and use tax so long as: (1) the county adopts an ordinance providing for the tax; (2) the rate is 0.5% of the sales price or purchase price; and (3) the tax is imposed "only for the purpose of directly reducing the property tax levy." According to BCTA, part (3) of the Sales Tax Statute mandates that a county sales tax provides a direct dollar-for-dollar offset to a county's property tax levy. Stated another way, BCTA argued that the Sales Tax Statute requires the County to calculate its property tax levy and then subtract the anticipated sales tax revenue from the property tax levy. BCTA's assertion was that the result is then the maximum amount that a county is permitted to levy through property taxes for the year.

BCTA's rationale is that a dollar-for-dollar offset is the *only* manner in which the county can satisfy the requirement that the tax is implemented "only for the purpose of directly reducing the property tax levy." While the argument may seem to have superficial merit, BCTA's interpretation is incorrect. Instead, the Court held that a dollar-for-dollar offset is one acceptable manner that a county may utilize to implement a county sales tax. However, it is *not* the only acceptable method. On the contrary, the Court concluded that county sales tax revenue may be used to pay for any purposes

that could be funded with property tax revenue.

The Court found that BCTA's argument failed for the following reasons: (1) a dollar-for-dollar offset is not required under the plain language of the Sales Tax Statute; (2) a dollar-for-dollar offset requirement ignores the language contained within closely-related statutes; (3) a dollar-for-dollar offset fails to account for the interpretation provided by a well-reasoned Attorney General Opinion; and (4) the proper venue to begin a campaign against the County's imposition of its sales tax were the numerous public hearings and meetings held on the ordinance; not the courtroom.

First, the Court found that BCTA's argument ignored the plain language of the Sales Tax Statute. The Court concluded that the Sales Tax Statute is merely an enabling statute that outlines the "purpose" of imposing the county sales tax. While the purpose of a county sales tax is to reduce the property tax levy, nothing in the Sales Tax Statute mandates how the revenues received from the sales tax must be appropriated in order to accomplish the reduction. As discussed above, the Court found that a dollar-for-dollar offset is one way to accomplish the reduction. However, the Court also concluded that it is not the only legally permissible way to comply with the Sales Tax Statute. Importantly, the Court determined that a county has also complied with the Sales Tax Statute so long as the county uses the sales tax revenues for purposes that could otherwise be funded by property tax revenue. The requirement that the reduction may only be accomplished by a dollar-for-dollar offset is simply not required by the plain language of the Sales Tax Statute.

Second, the Court's interpretation of the plain language is further supported by the surrounding statutes that also relate to the imposition of a local sales and use tax for special purpose districts (*i.e*., the Lambeau Field and Miller Park sales tax statutes). Unlike the Sales Tax Statute, these statutes contain specific direction as to how the proceeds from a tax are to be spent. Importantly, the Lambeau Field and Miller Park sales tax explicitly provide that the proceeds of the tax "shall be used exclusively to retire the district's debt." Unlike the typical county sales and use tax, there is no discretion as to how to apply the proceeds from the stadium taxes. In other words, if the Legislature had intended to equally constrain counties' discretion to spend sales and use tax revenue, it could have very easily done so, but did not.

Third, the Court found support for the County's position in a 1998 Wisconsin Attorney General Opinion addressing how a county may budget the proceeds from a sales and use tax.[2] According to the Attorney General, "such funds may be budgeted to reduce the amount of overall countywide property tax levy (*i.e.*, a dollar-for-dollar offset) or to defray the cost of any item which can be funded by a countywide property tax." The second option is the method chosen by Brown County. While Attorney General opinions are not binding precedent, they provide important guidance. This is particularly true for matters of statutory interpretation, where well-reasoned Attorney General opinions are regarded as presumptively correct.

Finally, the Court took notice of the many public hearings and board meetings on the proposed Ordinance imposing the sales and use tax. Very few members of the public voiced opposition to the County's imposition of a county sales and use tax at these hearings and meetings. Importantly, no members of BCTA attended the hearings or meetings. According to the Court, a courtroom is not the proper venue for BCTA to start its campaign against the tax. BCTA also had ample opportunity to present its interpretation of the County Sales Tax Statute to any of the county supervisors or to the County Executive. The Court found no evidence that BCTA undertook such efforts. For this reason, the Court determined that it would be an unacceptable usurpation of the legislative process for the Court to undue the County's thorough legislative process.

## Conclusion and Next Steps

The Court's decision is important for all counties throughout the State because it recognized county authority to appropriately utilize sales tax revenue and to ease the burden on county property taxpayers while also maintaining critical services to their residents. Again, a county may choose to use county sales tax revenue as a dollar-for-dollar offset against its property tax levy, but the key is that this is not the only permissible use of sales tax revenue. Because the County funding sources are limited, the Court held that the Sales Tax Statute enables counties to reduce property tax levies through several avenues as elected officials or voters decide.

BCTA has indicated its intent to appeal the Court's decision and the Association will keep you apprised as to the progress of the appeal.

[1] Wis. Stat. § 77.70
[2] OAG 01-98



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