(1m) MARCH SETTLEMENT BETWEEN COUNTIES AND THE STATE. On or before March 15, the county treasurer shall send to the secretary of administration the state's proportionate shares of taxes under sub. (1) (i) and (j).

(2) SUBSEQUENT SETTLEMENTS. On or before the 15th day of each month following the month in which an installment payment of real property taxes is required by the ordinance, the taxation district treasurer shall do all of the following:

(a) Pay to the proper treasurer all collections of delinquent special assessments, special charges and special taxes not previously settled for, as directed by sub. (1) (a) to (h).

(b) Pay to each taxing jurisdiction within the district its proportionate share of real property taxes collected, except that the taxation district treasurer shall pay the state's proportionate share to the county, and the county treasurer shall settle for that share under s. 74.29. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of real property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of real property taxes for each environmental remediation tax incremental district created by the county.

(c) Pay to each taxing jurisdiction within the district its proportionate share of taxes on improvements on leased land, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district its proportionate share of taxes on improvements on leased land.

(3) APPROVAL OF PAYMENT NOT REQUIRED. The taxation district treasurer shall make payments required under subs. (1) and (2) whether or not the governing body of the taxation district has approved those payments. Following a payment required under subs. (1) and (2), the taxation district treasurer shall prepare and transmit a voucher for that payment to the governing body of the taxation district.

History: 1987 a. 378; 1991 a. 39; 1995 a. 408; 2001 a. 16; 2003 a. 33, 228; 2005 a. 241, 418; 2007 a. 97; 2009 a. 171; 2013 a. 54, 81; 2013 a. 151 s. 28; 2015 a. 191, 216, 358.

74.31 Failure to settle timely. If the taxation district treasurer or county treasurer does not settle as required under ss. 74.23 to 74.30:

(1) INTEREST CHARGE. The taxation district or county which has not settled shall pay 12 percent annual interest on the amount not timely paid to the taxing jurisdiction, including this state, to which money is due, calculated from the date settlement was required.

(2) PENALTY. The taxing jurisdiction, including this state, to which money is due may demand, in writing, payment from the taxation district or county which has not settled. If, within 3 days after receipt of a written demand, settlement is not made, the taxation district or county shall pay the taxing jurisdiction, including this state, making the demand a 5 percent penalty on the amount remaining unpaid.

History: 1987 a. 387; 1991 a. 39.

74.315 Omitted property. (1) SUBMISSION. No later than October 1 of each year, the taxation district clerk shall submit to the department of revenue, on a form prescribed by the department, a listing of all the omitted taxes under s. 70.44 to be included on the taxation district's next tax roll, if the total of all such taxes exceeds $5,000.

(2) EQUALIZED VALUATION. After receiving the form under sub. (1), but no later than November 15, the department of revenue shall determine the amount of any change in the taxation district's equalized valuation that results from considering the valuation represented by the taxes described under sub. (1). The department's determination under this subsection is subject to review only under s. 227.53.

(3) NOTICE AND DISTRIBUTION. If the department of revenue determines under sub. (2) that the taxation district's equalized valuation changed as a result of considering the valuation represented by the taxes described under sub. (1), the department shall notify the taxation district and the taxation district shall distribute the resulting collections under ss. 74.23 (1) (a) 5., 74.25 (1) (a) 4m., and 74.30 (1) (dm).

History: 2009 a. 171.

SUBCHAPTER V

ADJUSTMENT

74.33 Sharing and charging back of taxes due to palpable errors. (1) GROUNDS. After the tax roll has been delivered to the treasurer of the taxation district under s. 74.03, the governing body of the taxation district may refund or rescind in whole or in part any general property tax shown in the tax roll, including agreed–upon interest, if:

(a) A clerical error has been made in the description of the property or in the computation of the tax.

(b) The assessment included real property improvements which did not exist on the date under s. 70.10 for making the assessment.

(c) The property is exempt by law from taxation, except as provided under sub. (2).

(d) The property is not located in the taxation district for which the tax roll was prepared.

(e) A double assessment has been made.

(f) An arithmetic, transpositional or similar error has occurred.

(2) EXCEPTIONS. The governing body of a taxation district may not refund or rescind any tax under this section if the alleged error may be appealed under s. 70.995 (8) (c) or if the alleged error is solely that the assessor placed a valuation on the property that is excessive.

(3) CHARGING BACK AND SHARING TAXES. If an error under sub. (1) has been discovered, the governing body of the taxation district shall proceed under s. 74.41.

History: 1987 a. 378; 1991 a. 39; 1993 a. 307; 1995 a. 408.

A potential error in classifying a mobile home as real, not personal, property was not a clerical error under sub. (1) (a), nor could it be considered to be the inclusion of a real property improvement that did not exist under sub. (1) (b), as the property did exist. Ahrens v. Town of Fulton, 2000 WI App 268, 240 Wis. 2d 124, 621 N.W.2d 643, 99–2466.

Affirmed on other grounds. 2002 WI 29, 251 Wis.2d 135, 641 N.W.2d 423, 99–2466.

74.35 Recovery of unlawful taxes. (1) DEFINITIONS. In this section "unlawful tax" means a general property tax with respect to which one or more errors specified in s. 74.33 (1) (a) to (f) were made. "Unlawful tax" does not include a tax in respect to which the alleged defect is solely that the assessor placed a valuation on the property that is excessive.

(2) CLAIM AGAINST TAXATION DISTRICT. (a) A person aggrieved by the levy and collection of an unlawful tax assessed against his or her property may file a claim to recover the unlawful tax against the taxation district which collected the tax.

(b) A claim filed under this section shall meet all of the following conditions:

1. Be in writing.

2. State the alleged circumstances giving rise to the claim, including the basis for the claim as specified in s. 74.33 (1) (a) to (e).

3. State as accurately as possible the amount of the claim.

4. Be signed by the claimant or his or her agent.

5. Be served on the clerk of the taxation district in the manner prescribed in s. 801.11 (4).

(2m) EXCLUSIVE PROCEDURE. A claim that property is exempt, other than a claim that property is exempt under s. 70.11 (21) or (27), may be made only in an action under this section. Such a

claim may not be made by means of an action under s. 74.33 or an action for a declaratory judgment under s. 806.04.

(3) ACTION ON CLAIM. (a) In this subsection, to "disallow" a claim means either to deny the claim in whole or in part or to fail to take final action on the claim within 90 days after the claim is filed.

(b) The taxation district shall notify the claimant by certified or registered mail whether the claim is allowed or disallowed within 90 days after the claim is filed.

(c) If the governing body of the taxation district determines that an unlawful tax has been paid and that the claim for recovery of the unlawful tax has complied with all legal requirements, the governing body shall allow the claim. The taxation district treasurer shall pay the claim not later than 90 days after the claim is allowed.

(d) If the taxation district disallows the claim, the claimant may commence an action in circuit court to recover the amount of the claim not allowed. The action shall be commenced within 90 days after the claimant receives notice by certified or registered mail that the claim is disallowed.

(4) INTEREST. The amount of a claim filed under sub. (2) or an action commenced under sub. (3) may include interest computed from the date of filing the claim against the taxation district, at the rate of 0.8 percent per month.

(5) LIMITATIONS ON BRINGING CLAIMS. (a) Except as provided under par. (b), a claim under this section shall be filed by January 31 of the year in which the tax is payable.

(b) A claim under this section for recovery of taxes paid to the wrong taxation district shall be filed within 2 years after the last date specified for timely payment of the tax under s. 74.11, 74.12 or 74.87.

(c) No claim may be filed or maintained under this section unless the tax for which the claim is filed, or any authorized installment payment of the tax, is timely paid under s. 74.11, 74.12 or 74.87.

(d) No claim may be made under this section based on the contention that the tax was unlawful because the property is exempt from taxation under s. 70.11 (21) or (27).

(6) COMPENSATION FOR TAXATION DISTRICT. If taxes are refunded under sub. (3), the governing body of the taxation district may proceed under s. 74.41.

History: 1987 a. 378; 1989 a. 104; 1991 a. 39; 1997 a. 237; 2007 a. 19.

This section only authorizes courts to determine whether a taxpayer is exempt from taxes already paid, not taxes that might be assessed in the future. Tax exempt status, once granted, is not automatic. It is subject to continuing review, a notion inconsistent with a declaration that property is exempt from future property taxes. Northwest Wisconsin Community Services Agency, Inc. v. City of Montreal, 2010 WI App 119, 328 Wis. 2d 760, 789 N.W.2d 392, 09–2568.

74.37 Claim on excessive assessment. (1) DEFINITION. In this section, a "claim for an excessive assessment" or an "action for an excessive assessment" means a claim or action, respectively, by an aggrieved person to recover that amount of general property tax imposed because the assessment of property was excessive.

(2) CLAIM. (a) A claim for an excessive assessment may be filed against the taxation district, or the county that has a county assessor system, which collected the tax.

(b) A claim filed under this section shall meet all of the following conditions:

1. Be in writing.
2. State the alleged circumstances giving rise to the claim.
3. State as accurately as possible the amount of the claim.
4. Be signed by the claimant or his or her agent.
5. Be served on the clerk of the taxation district, or the clerk of the county that has a county assessor system, in the manner prescribed in s. 801.11 (4) by January 31 of the year in which the tax based upon the contested assessment is payable.

(3) ACTION ON CLAIM. (a) In this subsection, to "disallow" a claim means either to deny the claim in whole or in part or to fail to take final action on the claim within 90 days after the claim is filed.

(b) The taxation district or county that has a county assessor system shall notify the claimant by certified or registered mail whether the claim is allowed or disallowed within 90 days after the claim is filed.

(c) If the governing body of the taxation district or county that has a county assessor system determines that a tax has been paid which was based on an excessive assessment, and that the claim for an excessive assessment has complied with all legal requirements, the governing body shall allow the claim. The taxation district or county treasurer shall pay the claim not later than 90 days after the claim is allowed.

(d) If the taxation district or county disallows the claim, the claimant may commence an action in circuit court to recover the amount of the claim not allowed. The action shall be commenced within 90 days after the claimant receives notice by registered or certified mail that the claim is disallowed.

(4) CONDITIONS. (a) No claim or action for an excessive assessment may be brought under this section unless the procedures for objecting to assessments under s. 70.47, except under s. 70.47 (13), have been complied with. This paragraph does not apply if notice under s. 70.365 was not given.

(b) No claim or action for an excessive assessment may be brought or maintained under this section unless the tax for which the claim is filed, or any authorized installment of the tax, is timely paid under s. 74.11 or 74.12.

(c) No claim or action for an excessive assessment may be brought or maintained under this section if the assessment of the property for the same year is contested under s. 70.47 (13) or 70.85. No assessment may be contested under s. 70.47 (13) or 70.85 if a claim is brought and maintained under this section based on the same assessment.

(5) INTEREST. The amount of a claim filed under sub. (2) or an action commenced under sub. (3) may include interest at the average annual discount rate determined by the last auction of 6–month U.S. treasury bills before the objection per day for the period of time between the time when the tax was due and the date that the claim was paid.

(7) COMPENSATION. If taxes are refunded under sub. (3), the governing body of the taxation district or county that has a county assessor system may proceed under s. 74.41.

History: 1987 a. 378; 1989 a. 104; 1993 a. 292; 1995 a. 408; 2007 a. 86; 2017 a. 207 s. 5; 2017 a. 358.

Sections 70.47 (13), 70.85, and 74.37 provide the exclusive method to challenge a municipality's bases for assessment of individual parcels. All require appeal to the board of review prior to court action. There is no alternative procedure to challenge an assessment's compliance with the uniformity clause. Hermann v. Town of Delavan, 215 Wis. 2d 370, 572 N.W.2d 855 (1998), 96–0171.

Claimants who never received notice of a changed assessment under s. 70.365 were exempt from the obligation to proceed before the board of review. However, they were required to meet the January 31 filing date in sub. (2), regardless of the fact that they never received the notice. Reese v. City of Pewaukee, 2002 WI App 67, 252 Wis. 2d 361, 642 N.W.2d 596, 01–0850.

While certiorari review of an assessment is limited to the review of the board of assessment's record, sub. (3) (d) allows the court to proceed without regard to any determination made at an earlier proceeding. The assessor's assessment is presumed correct only if the challenging party does not present significant contrary evidence. The court may hear new evidence and can enter a judgment if it is in the best interest of the parties. Bloomer Housing Limited Partnership v. City of Bloomer, 2002 WI App 252, 257 Wis. 2d 883, 653 N.W.2d 309, 01–3495.

After *Nankin,* the state–wide application of this section must prevail over any statutes that would defeat its implementation. Special rules help harmonize provisions that were once fully compatible with this section but, as a result of Nankin, conflict with this section. U.S. Bank National Association v. City of Milwaukee, 2003 WI App 220, 267 Wis. 2d 718, 672 N.W.2d 722, 03–0724.

When a taxpayer brings an action to recover excessive taxes under this section, the least favorable outcome for the taxpayer, and the best possible outcome for the taxation authority, is for the court to conclude there were no excessive taxes. The court cannot impose a greater tax burden than the one the taxation authority already agreed to when it accepted the taxpayer's payment. Although the court need not defer to the board of review's determination, and there is a statutory presumption that the assessor's determination is correct, when the board of review reduces the original assessment the court cannot reinstate the assessor's original assessment. Trailwood Ven-