

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 24, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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Appeal No. 2015AP429

STATE OF WISCONSIN

Cir. Ct. No. 2010CV3785
2012CV2476

**IN COURT OF APPEALS
DISTRICT IV**

SSM HEALTH CARE OF WISCONSIN, INC.,

PLAINTIFF-RESPONDENT,

V.

CITY OF FITCHBURG,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
SHELLEY J. GAYLORD, Judge. *Affirmed.*

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

¶1 KLOPPENBURG, P.J. SSM Health Care of Wisconsin, Inc., which owns and operates St. Mary's Hospital, sought a refund for property taxes levied by the City of Fitchburg against all of SSM's personal property that was located in a renal center and a sleep center owned and operated by SSM in

Fitchburg during the 2009, 2010, and 2011 tax years. On summary judgment, the circuit court held that some of SSM's personal property in the two centers is exempt from tax under WIS. STAT. § 70.11(4m)(a) (2013-14), the non-profit hospital tax exemption, and that SSM is entitled to a refund for that tax-exempt personal property.¹

¶2 The City appeals and argues that the circuit court erred in granting summary judgment in favor of SSM for two reasons: (1) the non-profit *hospital* tax exemption under WIS. STAT. § 70.11(4m) does not apply here because the renal center and the sleep center are each used as a “*doctor’s office*” and, therefore, all of the personal property located in each center is taxable; and (2) SSM initially sought tax exemption for “all” personal property in each center and, according to the City, SSM cannot subsequently “convert a request for a total tax exemption into a partial exemption in the midst of litigation.” For the reasons set forth below, we reject the City’s arguments and affirm.

BACKGROUND

¶3 We briefly summarize the undisputed facts here, with additional undisputed facts addressed in the discussion section that follows.

¶4 SSM Health Care of Wisconsin is a non-profit corporation that owns and operates St. Mary’s Hospital in Madison, Wisconsin. SSM leases two buildings in the City of Fitchburg, and operates a renal center in one of the buildings and a sleep center in the other.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶5 SSM sub-leases a portion of the building that houses the renal center to Madison Area Renal Specialists (MARS), a physician group practice. SSM sub-leases a portion of the building that houses the sleep center to Dean Health Systems.

¶6 SSM owns personal property that it keeps in the centers, including dialysis machines, furniture, computers, and other electronics. SSM filed timely property tax exemption requests with the City for all of that property for the 2009, 2010, and 2011 tax years. The City denied the tax exemption requests in their entirety. SSM filed a complaint seeking a refund of the property taxes plus interest.

¶7 After discovery, the City moved for summary judgment in December 2013, asserting that: (1) SSM admitted that some of the personal property in the centers is not tax-exempt, and (2) all of the personal property in the centers is not tax-exempt because the exemption for non-profit hospitals under WIS. STAT. § 70.11(4m) does not apply. In response, SSM conceded that some of its personal property in the centers is not tax-exempt, but argued that the remainder of its personal property is exempt and, therefore, SSM is entitled to a refund for the tax-exempt property items.

¶8 In June 2014, the circuit court denied the City's motion for summary judgment, granted SSM partial summary judgment, and ordered SSM to "itemize the items of personal property and their asserted values, as of each assessment date at issue, which [SSM] admits are not exempt from taxation under Wis. Stat. § 70.11(4m)," no later than July 8, 2014. The court allowed the City to "contest the asserted value of the items of personal property SSM admits [are] not tax exempt and [to] request an evidentiary hearing if necessary."

¶9 SSM produced an asset list in July 2014, itemizing the personal property that it conceded is not exempt from taxation. SSM indicated one value for each piece of personal property that it conceded is not exempt from taxation, but did not provide separate values for each tax year.

¶10 The City filed an objection to the asset list and a motion for reconsideration, arguing that SSM did not provide a “complete list of all claimed tax-exempt property and the value for the tax years in question and has failed to meet its burden to demonstrate the property in the two [centers] is tax exempt for the tax years in question.” The City also argued that SSM should have included certain property that was “retired” in 2009 on the list of assets not exempt from taxation, because such property is not “in use” so as to qualify for exemption under the statute. SSM provided an updated list of non-exempt property items on August 22, 2014, separating out the property values by tax years and including retired personal property.

¶11 The circuit court denied the City’s motion for reconsideration with respect to the summary judgment ruling. However, the circuit court found that SSM did not comply with the order to provide a detailed list of non-exempt assets until August 22, 2014, when it submitted the updated itemized asset list, and, therefore, held that statutory interest on the refund did not begin to run until that date.

DISCUSSION

¶12 The City argues that the circuit court erred in granting summary judgment in favor of SSM for two reasons: (1) the non-profit *hospital* tax exemption under WIS. STAT. § 70.11(4m) does not apply here because the renal center and the sleep center are each used as a “*doctor’s office*” and, therefore, all

of the personal property located in each center is taxable; and (2) SSM initially sought a tax exemption for “all” personal property in each center and, according to the City, SSM cannot subsequently “convert a request for a total tax exemption into a partial exemption in the midst of litigation.” In the sections that follow, we state the applicable standard of review, we review the pertinent statute and case law, and finally we address and reject each of the City’s arguments.

A. Standard of Review

¶13 Our review of a circuit court’s grant of summary judgment is de novo. *Post v. Schwall*, 157 Wis. 2d 652, 656, 460 N.W.2d 794 (Ct. App. 1990). “When reviewing a grant ... of summary judgment, we apply the same methodology as the [circuit] court.” *Universal Die & Stampings, Inc. v. Justus*, 174 Wis. 2d 556, 560, 497 N.W.2d 797 (Ct. App. 1993). “Summary judgment is granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Kruschke v. City of New Richmond*, 157 Wis. 2d 167, 169, 458 N.W.2d 832 (Ct. App. 1990).

B. The Non-Profit Hospital Property Tax Exemption and the “Doctor’s Office” Exclusion

¶14 SSM seeks a tax exemption not for the real property that comprises the buildings housing its renal center and its sleep center, but for its personal property located in each center. The City argues that the circuit court erred in applying the non-profit hospital tax exemption statute to the personal property kept by SSM at each center. Specifically, the City contends that each center is used as a “doctor’s office,” and therefore all of the personal property located in each center is not tax-exempt.

¶15 Personal property is “presumptively taxable.” *University of Wisconsin Medical Found., Inc. v. City of Madison*, 2003 WI App 204, ¶10, 267 Wis. 2d 504, 671 N.W.2d 292; *see also* WIS. STAT. § 70.01. “Certain property, however, is exempted from tax by statute.” *University of Wisconsin Medical Found.*, 267 Wis. 2d 504, ¶10.

¶16 WISCONSIN STAT. § 70.11(4m)(a) is one such statute, and it exempts “personal property used exclusively for the purposes of any hospital of 10 beds or more devoted primarily to the diagnosis, treatment or care of the sick, injured, or disabled, which hospital is owned and operated by a corporation, voluntary association, foundation or trust” “Sec. 70.11(4m), Stats., was created in 1957 ... specifically to apply to hospitals,” and any “construction of the statute must take into account its clear legislative purpose, namely, to provide a benefit to nonprofit hospitals engaged in the care of the sick.” *Sisters of St. Mary v. City of Madison*, 89 Wis. 2d 372, 380, 278 N.W.2d 814 (1979).

¶17 “[T]o qualify as property tax exempt under WIS. STAT. § 70.11(4m)(a), the use of the property in question must be reasonably necessary to the efficient functioning of the hospital as an organization in light of the hospital’s tax-exempt purposes, namely, the diagnosis, treatment, and care of patients.” *St. Joseph’s Hosp. of Marshfield, Inc. v. City of Marshfield*, 2004 WI App 187, ¶14, 276 Wis. 2d 574, 688 N.W.2d 658. Additionally, the property must not be “used ... as a *doctor’s office*.” WISCONSIN STAT. § 70.11(4m) (emphasis added). In other words, personal property used for the purpose of a “doctor’s office” does not qualify for the tax exemption under § 70.11(4m)(a).

¶18 “While we are required to strictly construe tax exemption statutes in favor of taxation, the statute need not be given ... the narrowest possible

construction. Moreover, it should not be so strictly construed as to defeat the legislative intent of creating the exemption—here, to encourage not-for-profit hospitals to provide care for the sick.” *Covenant Healthcare System, Inc. v. City of Wauwatosa*, 2011 WI 80, ¶32, 336 Wis. 2d 522, 800 N.W.2d 906 (citations omitted).

¶19 The “construction of the term ‘used as a doctor’s office’ is a matter of statutory interpretation, which we review *de novo*.” *St. Clare Hosp. of Monroe, Wisconsin, Inc. v. City of Monroe*, 209 Wis. 2d 364, 368, 563 N.W.2d 170 (Ct. App. 1997). “‘Doctor’s office’ is not a technical phrase that has a peculiar meaning in the law.” *Id.* at 372. “[T]he determination of whether property is used as a doctor’s office ultimately turns on the facts of each case.” *Id.*

¶20 SSM, as the petitioner for the tax exemption, bears the burden of establishing that each center is not used as a doctor’s office. *See Covenant Healthcare*, 336 Wis. 2d 522, ¶30. “Whether the undisputed facts as found by the circuit court satisfy the statutory standard is also a question of law that we review *de novo*.” *Id.*, ¶21.

¶21 We now turn to three Wisconsin cases that provide guidance in considering whether property is used as part of a doctor’s office.

1. Case Law Concerning the “Doctor’s Office” Exclusion

a. St. Elizabeth Hosp., Inc. v. City of Appleton

¶22 *St. Elizabeth Hospital* concerned a hospital “First Care” unit—a walk-in area of the hospital’s emergency room facility. 141 Wis. 2d 787, 789, 416 N.W.2d 620 (Ct. App. 1987). The issue there was whether the “First Care” facility was a doctor’s office such that its real and personal property would be

excluded from the non-profit hospital tax exemption under WIS. STAT. § 70.11(4m). We concluded that the First Care facility was not a doctor’s office and therefore did qualify for the tax exemption after considering four “factors”:

- “Physicians neither own nor lease the ‘First Care’ facility or equipment.”
- “Physicians, pursuant to their contractual agreement, do not receive variable compensation related to the scope or extent of their services” in the First Care facility.
- “Physicians do not employ or supervise non-physician staff” in the First Care facility, with the exception of a medical director of the emergency and First Care department.
- “[B]illing statements are issued by the hospital.”

St. Elizabeth Hosp., 141 Wis. 2d at 793.

¶23 In a later decision, we clarified that we did not intend to imply that “satisfaction of the four factors listed [in *St. Elizabeth Hospital*] would conclusively establish that property was not used as a doctor’s office,” nor, conversely, did we intend to “imply that the absence of any or all of these factors would establish that property was used as a doctor’s office.” *St. Clare Hosp.*, 209 Wis. 2d at 371. Rather, as quoted above, “the determination of whether property is used as a doctor’s office ultimately turns on the facts of each case.” *Id.* at 372.

b. St. Clare Hosp. of Monroe, Wisconsin, Inc. v. City of Monroe

¶24 In *St. Clare Hospital*, we held that the “clinic building” in that case was “used as a doctor’s office” and, therefore, was not exempt from property taxation under WIS. STAT. § 70.11(4m)(a). *St. Clare Hosp.*, 209 Wis. 2d at 366-67. We noted that some of the *St. Elizabeth Hospital* factors weighing against classifying the clinic building as a doctor’s office were present, such as “the physicians’ lack of ownership of the medical practice,” but held that that was not

dispositive, and that the existence of other facts favored classifying the clinic building as a doctor’s office. *St. Clare Hosp.*, 209 Wis. 2d at 372. Those facts included:

- “[T]he clinic physicians receive variable compensation related to the extent of their services [performed in the clinic building], i.e., their productivity.”
- The physicians’ employment agreement “specifically provides that a physician who oversees a physician’s assistant, certified nurse practitioner or midwife [in the clinic building] receives extra compensation.”
- “[T]he bills of the hospital and clinic are generated by two separate software systems.”
- “Except for pediatricians, each doctor practicing in the clinic had an office in the [clinic] building.”
- “The clinic building does not have inpatient facilities”
- “The clinic is open Monday through Friday during regular business hours and its physicians see most patients by appointment.”

St. Clare Hosp., 209 Wis. 2d at 371-73.

c. Covenant Healthcare System, Inc. v. City of Wauwatosa

¶25 The third and most recent case, *Covenant Healthcare*, involved an outpatient clinic located “off-site ... from the St. Joseph Chambers Street Hospital.” 336 Wis. 2d 522, ¶¶5, 24. Our supreme court reviewed the facts relied upon in *St. Clare Hospital* and *St. Elizabeth Hospital*. The court noted that while there were two facts—the outpatient clinic does not provide inpatient services and most patients at the outpatient clinic are seen by appointment during regular business hours—weighing against concluding that the outpatient clinic was not a doctor’s office, those facts “alone are not determinative.” *Covenant Healthcare*, 336 Wis. 2d 522, ¶38. Rather, the court held that Covenant met its burden of

demonstrating that the outpatient clinic was not a doctor's office based on the following facts:

- “[P]hysicians practicing at the Outpatient Clinic do not receive variable compensation related to the extent of their services.”
- “Outpatient Clinic physicians do not receive extra compensation for overseeing non-physician staff.”
- “[The] Outpatient Clinic’s bills are generated on the same software system as the bills generated by St. Joseph.”
- “[P]hysicians at the Outpatient Clinic do not have their own offices. Instead Outpatient Clinic Physicians have shared access to unassigned cubicles.”
- “[P]hysicians practicing at the Outpatient Clinic do not own or lease the building or equipment—all equipment is the exclusive property of St. Joseph.”
- “St. Joseph had previously provided these services through the St. Joseph Bluemound Outpatient Hospital, which the City considered tax-exempt property”
- “The City concedes that the outpatient center at the St. Joseph Chambers Street Hospital [which provides services similar to those provided by the Outpatient Clinic] is tax-exempt.”
- “The Outpatient Clinic contains a gift shop and a cafeteria for the use of patients, visitors, and staff.”
- “[T]he Outpatient Clinic Urgent Care Center is designed to operate similarly to an emergency room[,] ... may accept emergency ambulances and has the capability to treat all levels of emergency care.”
- Patients receiving services receive two bills, “a facility bill from the Outpatient Clinic” and a “professional bill from the attending physician.”

Covenant Healthcare, 336 Wis. 2d 522, ¶¶37-42 & n.7. The court also held that the outpatient clinic’s “proximity to the St. Joseph Chambers Street Hospital is irrelevant when considering whether the Outpatient Clinic qualifies as a doctor’s office.” *Id.*, ¶43.

2. *The “Doctor’s Office” Exclusion as Applied to the Renal Center and the Sleep Center*

¶26 The City argues that the circuit court erred in applying the law when it concluded that the renal center and sleep center are not used as doctors’ offices under WIS. STAT. § 70.11(4m)(a) for the pertinent tax years.

¶27 We again reiterate our statement in *St. Clare Hospital*: “[A]lthough the factors set forth in [the cases above] are helpful, the determination of whether property is used as a doctor’s office ultimately turns on the facts of each case.” 209 Wis. 2d at 372. In the subsections that follow, we examine the undisputed facts as they pertain to the renal center and the sleep center separately. Upon our independent review of the record on summary judgment and in light of the case law discussed above, we conclude that SSM has met its burden of demonstrating that the renal center and the sleep center are not used as doctors’ offices. Therefore, SSM’s personal property located in each of those centers, except property it conceded to be non-exempt in its August 2014 submission to the court, is tax-exempt.

a. Renal Center

¶28 The following facts support a conclusion that the renal center is not used as a doctor’s office.

¶29 The renal center is a free-standing medical facility like that in *Covenant Healthcare*. As in *Covenant Healthcare*, patients at the renal center receive bills from the renal center, which shares a common billing system with St. Mary’s hospital, separately from bills from their physicians. And as in *Covenant Healthcare*, the services provided in the renal center were at one point provided at St. Mary’s Hospital.

¶30 The building that houses the renal center has approximately 28,000 square feet of space. SSM sub-leases a small portion of that space—approximately 641 square feet of exclusive space and 500 square feet of shared space—to the physician group practice MARS. The MARS physicians do not have offices within the renal center. The entrance to the renal center is separate from the entrance to the MARS group practice. MARS physicians do not perform consults with patients in the renal center, and some of the MARS patients do not receive treatment at the renal center. The renal center accepts patients from any physician with admitting privileges at St. Mary’s Hospital. In other words, the renal center is not exclusively used by patients seen by MARS physicians.

¶31 Regarding operations within the renal center, physicians periodically make rounds in the center to see how their patients are doing in accordance with certain regulations, but physicians do not provide actual dialysis treatment. Indeed, physicians generally do not even know how to operate the dialysis machines in the renal center. Rather, the physicians prescribe a therapy for each patient and the SSM nursing staff provide the actual treatment to the patient in the renal center.²

¶32 The City points to certain facts that it contends favor a conclusion that the center is used as a doctor’s office. However, these facts are not significant and we note that the City misconstrues certain facts. For example, the City states that “MARS doctors lease a significant portion of space at the Renal Center,

² SSM contracts with MARS to have one of its physicians serve as the renal center’s medical director. The medical director has certain medical and administrative duties, including developing and implementing “clinical policies and guidelines [and] assur[ing] compliance with appropriate regulatory bodies.”

including four offices, half the waiting room, and front office space.” However, MARS does not lease a portion of the renal center; rather, it sub-leases a portion of the *building* that houses the renal center. It is undisputed from the summary judgment materials that the renal center has a separate entrance and separate signage from the MARS physician group practice. MARS physicians do not have offices *within* the renal center, and the MARS group practice leases a mere 1,141 square feet (including its portion of the shared space) of the total 28,000 square feet of space in the building.

¶33 The City also points to other facts that we do not view as favoring a conclusion either way. For example, the City points to the fact that SSM hires a physician from MARS to serve as the medical director but concedes that the “Medical Director do[es] not ‘supervise’ SSM employees in a strict employment sense.” The City nevertheless suggests that the presence of a medical director in the renal center, which is required by regulation, supports the conclusion that the renal center is a doctor’s office. We see no significance in this fact here.³ The medical director at the renal center does not employ or supervise any staff in the renal center. The renal center is staffed with employees of St. Mary’s Hospital. The medical director’s role is generally administrative.

¶34 As another example, the City asserts that MARS physicians receive “variable compensation for making rounds at the Renal Center,” and contends that this “fact” supports a conclusion that the renal center is a doctor’s office.

³ The First Care facility in *St. Elizabeth Hospital* also had a designated medical director who was “responsible for direction and oversight of medical services provided,” but we did not consider that fact as favoring a conclusion that the First Care facility was a doctor’s office. 141 Wis. 2d at 793 n.1.

However, MARS physicians are not compensated by SSM. Rather, the physicians issue a bill to the patient (or the patient's insurance). This type of compensation arrangement is similar to that in *Covenant Healthcare*, in which physicians with privileges rendered professional services at the outpatient clinic and then issued a bill for their professional services, separate from the facility fees charged by St. Joseph Hospital. 336 Wis. 2d 522, ¶34 n.14, ¶41. Our supreme court in *Covenant Healthcare* viewed such compensation arrangement as *not* being “variable compensation.” *See id.*, ¶37 (“[P]hysicians practicing at the Outpatient Clinic do not receive variable compensation related to the extent of their services.”). Following *Covenant Healthcare*, we also conclude that the type of compensation arrangement in this case is not variable compensation and does not support a conclusion that the renal center is a doctor's office.

¶35 Considering all of the relevant undisputed facts in light of the case law above, we conclude that SSM has met its burden of establishing that the renal center is not a doctor's office under WIS. STAT. § 70.11(4m)(a).

¶36 Moreover, the City concedes that the establishment of the renal center in Fitchburg was “part of an effort to free up space at St. Mary's Hospital.” The City also concedes that the establishment of the renal center was “part of an effort to provide treatment services in a more efficient and effective manner.” It would be contrary to the legislative intent if we were to tax SSM for moving its renal center to a separate building in order to expand its provision of care for the sick. *See Covenant Healthcare*, 336 Wis. 2d 522, ¶32 (“Moreover, it should not be so strictly construed as to defeat the legislative intent of creating the exemption—here, to encourage not-for-profit hospitals to provide care for the sick.”).

b. Sleep Center

¶37 Like the renal center, the sleep center is also housed in a free-standing facility. Patients of the sleep center also receive bills through the billing system at St. Mary's Hospital. And like the renal center, the sleep center was originally housed in St. Mary's Hospital.

¶38 The building that houses the sleep center has a total of 10,639 square feet of space. SSM sub-leases approximately twenty percent of that building to Dean Health Systems—1,542 square feet of exclusive space and 534 square feet of shared space. Although the sleep center and the Dean Health Systems space share one entrance and share a waiting room, they have different receptionists and separate entrances coming off from the waiting room.

¶39 The City points to no evidence contradicting the circuit court's conclusion that physicians simply "don't do a heck of a lot in [the sleep center]," and that the sleep center is mostly "run by and for [St. Mary's Hospital]."

¶40 Indeed, the director of respiratory services for St. Mary's Hospital, who also manages the sleep center, averred that physicians have "no need ... to enter the Sleep Center because it is not a place where patients are seen by physicians," and that the sleep studies performed at the sleep center "are performed and billed in the same manner as when sleep studies were performed at St. Mary's Hospital." According to the director of respiratory services, after a physician orders a sleep study for a patient, the patient comes to the sleep center to have the sleep study conducted overnight and sleep technologists from St. Mary's Hospital monitor the study. The ordering physician then receives the test results, with any necessary follow-up with the physician occurring outside of the sleep center.

¶41 The City misstates facts with respect to the sleep center, such as that Dean Health Systems physicians have “offices and exam rooms” in the sleep center. Similar to our discussion above with respect to the renal center, Dean Health Systems physicians do not have offices and exam rooms in the sleep center; rather, Dean Health Systems sub-leases a portion of the *building* that houses the sleep center for Dean Health Systems’ offices and exam rooms.

¶42 Considering all of the relevant undisputed facts in light of the case law above, we conclude that SSM has met its burden of establishing that the sleep center is not a doctor’s office under WIS. STAT. § 70.11(4m)(a).

¶43 Moreover, as with the renal center, the City concedes that the establishment of the sleep center in Fitchburg was also “part of an effort to free up space at St. Mary’s Hospital.” It would be contrary to the legislative intent if we were to tax SSM for moving its sleep center to a separate building in order to expand its provision of care for the sick. *See Covenant Healthcare*, 336 Wis. 2d 522, ¶32 (“Moreover, it should not be so strictly construed as to defeat the legislative intent of creating the exemption—here, to encourage not-for-profit hospitals to provide care for the sick.”).

C. “Total” Versus “Partial” Exemption

¶44 The City argues that the circuit court erred in denying it summary judgment because SSM initially sought tax exemption for “all” personal property in each of the two centers and, according to the City, SSM cannot subsequently “convert a request for a total tax exemption into a partial exemption in the midst of litigation.” The City faults SSM for not providing an itemized list of non-exempt property when it initially filed the tax-exemption requests, but the City fails to explain why we should conclude that failure as barring SSM from being entitled to

a refund for taxes levied against property that is tax-exempt. The City contends that SSM is required to “[s]tate as accurately as possible the amount of the claim” under WIS. STAT. § 74.35—titled “Recovery of unlawful taxes”—and that SSM failed to do so, but the City articulates no legal theory that prohibits SSM from such recovery.⁴ While there may be some legal theory that could support its argument, the City fails to develop its argument or cite to any legal authority in support of its argument and, therefore, we reject this argument on that basis. *See State v. Pettit*, 171 Wis.2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (“Arguments unsupported by references to legal authority will not be considered” and “[w]e may decline to review issues inadequately briefed”).

¶45 Moreover, as the circuit court noted, SSM’s failure to initially provide a detailed list of non-exempt assets “goes to what date the interest starts accruing from, *not whether it accrues.*” The circuit court ordered that statutory interest on the refund did not begin to accrue until August 22, 2014, when SSM provided the City with the updated itemized asset list with the required values for each pertinent tax year. That part of the court’s order is not challenged on appeal.

CONCLUSION

¶46 For the reasons stated above, we conclude that the circuit court did not err in granting partial summary judgment in favor of SSM. Therefore, we affirm.

⁴ WISCONSIN STAT. § 74.35(5) lists certain limitations on bringing a claim for recovery of unlawful taxes, none of which includes the type of limitation that the City seems to suggest.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

