

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

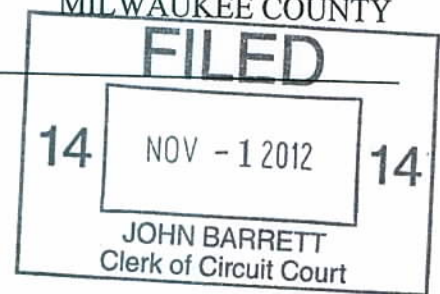
JERUSALEM EMPOWERED AFRICAN  
METHODIST EPISCOPAL CHURCH

Plaintiff,

v.

CITY OF MILWAUKEE,

Defendant.



Case No. 12-CV-8079

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**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

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**INTRODUCTION**

At the heart of this lawsuit is a simple question – should a small parcel of land located in the City of Milwaukee and owned by the Jerusalem Empowered African Methodist Episcopal Church (“JEAMEC”) be exempt from property taxes, as almost all church property in the City is? Or should part of the church’s property be taxed because the City Assessor has determined that it is “excess” to the church’s requirements?

The City does not want this Court to consider that question. It asks this court to dismiss JEAMEC’S complaint, leaving the church with no remedy for the wrong it has suffered. And all because the church does not have the \$10,000 in taxes, interest and penalties that the City claims it is owed.

The City is wrong. JEAMEC’s Complaint is more than sufficient to survive this preliminary motion. JEAMEC asserts three claims for relief. First, it brings a declaratory judgment claim attacking the constitutionality of Wis. Stat. § 74.35(2m), which requires a claim that a property is exempt from taxation be brought under the procedures of § 74.35. (Compl., 1st, 2<sup>nd</sup>, and 3<sup>rd</sup> claims.) Nothing in that statute requires JEAMEC to first pay the disputed taxes

before bringing a declaratory judgment action challenging the statute's constitutionality. The City has advanced no argument or authority for the proposition that these constitutional challenges must be dismissed.

Second, JEAMEC asserts a claim on the merits and may proceed with this claim under § 74.35(3)(d), even though it has not paid the disputed taxes. JEAMEC filed an exemption claim with the City, and the City elected to accept the claim for consideration on the merits notwithstanding JEAMEC's inability to first pay the contested amount. The City need not have done so, but once it considered and "disallowed" JEAMEC's claim, the church has a right to judicial review under § 74.35(3)(d). (Compl., 4<sup>th</sup> claim.)

And third, JEAMEC claims that the City's taxation of its property is unlawful, either in violation of statutory exemption law or constitutional equal protection requirements. (Compl., 5<sup>th</sup> and 6<sup>th</sup> claims.)

The City's motion to dismiss should be denied. First, because the Common Council permitted JEAMEC's claim to be "filed" and then "disallowed" it, JEAMEC has the right to file suit. Second, JEAMEC has served the Attorney General, mooting the City's only argument that JEAMEC's challenge to the constitutionality of § 74.35 may not proceed. This Court therefore has jurisdiction to hear JEAMEC's declaratory judgment claims challenging the constitutionality of § 74.35(2m).

### **STATEMENT OF FACTS**

When reviewing a motion to dismiss, the court must assume that all facts alleged in the complaint and its attachments are true. *In re Arends*, 2010 WI 46, ¶29, 325 Wis. 2d 1, 784 N.W.2d 513. The complaint should be "liberally construed" and "need not state all the ultimate

facts constituting the cause of action.” *Kaloti Enters., Inc. v. Kellogg Sales Co.*, 2005 WI 111, ¶11, 283 Wis. 2d 555, 699 N.W.2d 205.

## **I. JEAMEC**

The Jerusalem Empowered African Methodist Episcopal Church is organized as a not-for-profit corporation exempt from taxes under § 501(c)(3) of the Internal Revenue Code. JEAMEC is a member of the African Methodist Episcopal Church, a well-established worldwide church with a long religious tradition. The AME Church has member congregations in nearly every state and dozens of countries around the world. (Compl. ¶¶ 8-10.)

JEAMEC’s religious mission, like that of other AME churches around the world, is both to spread the gospel and to minister to the social development of all God’s people. Its mission thus extends beyond those who are members of the congregation to all those who are in need of its help. Community service is thus a central part of JEAMEC’s benevolent vision for its members. (Compl. ¶¶11-13.)

In December 2008, JEAMEC purchased the church property at 9540 Good Hope Road in the City of Milwaukee. The 4.4-acre property includes the church building and a parking lot. The area to the north and west of the building and the parking lot is an open field. JEAMEC uses the field for worship services during the summer months, for a summer vacation bible school, for outdoor adult bible study meetings, and for fundraising activities such as car washes and summer barbecues. As an integral part of its mission of community service, JEAMEC makes its outdoor space available for regular community health fairs, youth crime awareness and prevention programs, and a back to school drive that collects and provides school supplies to hundreds of low income children in the community. (Compl. ¶¶11-13.)

JEAMEC purchased the church property from King of Kings Lutheran Church, a congregation that had built the church and owned it for many years. Nothing about the property changed as a result of its purchase by JEAMEC. The City of Milwaukee had never attempted to tax King of Kings on any part of the property. (Compl. ¶73.)

## **II. The Tax Dispute**

JEAMEC was unaware that after it purchased the property in 2008 it would need to make a new tax exemption filing with the City of Milwaukee that would continue the property tax treatment that had been in effect for King of Kings. JEAMEC discovered the problem in 2010 and discussed it with the City. In June, 2010, the City Assessor advised JEAMEC that due to its failure to timely request a tax exemption it would have to pay the property taxes due for 2009. (Compl. ¶15, Ex. A.) After further discussions with the City, however, the Common Council passed a Resolution that acknowledged that “because it already had non-profit status with the State of Wisconsin, Jerusalem Empowered was unaware that it needed to file for property-tax-exempt status for the [Good Hope] property with the City of Milwaukee.” The Resolution further stated that JEAMEC “is a religious and benevolent institution which should not be subject to property taxation on its church building.” The Council therefore directed the responsible City officials to cancel the 2009 property taxes, interest, and penalties that had been assessed against JEAMEC. (Compl. ¶17, Ex. C.)

In the meantime, JEAMEC had timely filed its application for a property tax exemption for 2010. In response to that application, the City Assessor determined that JEAMEC was entitled to only a partial property tax exemption for the church property. According to the City Assessor, “[e]xcess lands, not used, are not entitled to exemption. The excess land of two acres is assessed at \$180,000.” (Compl. ¶16, Ex. B.) The City Assessor’s letter does not say how it

was determined that JEAMEC did “not use” this part of the church property or explain in any way how it had been decided that the property was “excess” to the needs and requirements of the JEAMEC congregation. (*Id.*) The City has sent tax bills reflecting its decision to JEAMEC for 2010 and 2011. (Compl. ¶18.)

In January, 2012, counsel for JEAMEC filed a claim against the City with respect to the City’s unlawful attempt to collect these taxes. Wisconsin Statute § 74.35 directs that such claims be filed with the clerk of the taxation district in question, that the claim set forth the circumstances giving rise to the claim and the amount of the claim, and that the claim be in writing and signed by the claimant or its attorney. Wis. Stat. § 74.35(2). The claim filed by JEAMEC satisfied these statutory requirements. (Compl. ¶19, Ex. F.)

In furtherance of its claim, JEAMEC submitted written documentation of the various religious, benevolent, and charitable ways in which JEAMEC “uses” the property that the City has claimed is excess to the church’s needs. That submission also included a detailed description of land owned by churches in the vicinity of JEAMEC that all had as much or more “excess” property that the City did not tax. (Compl. ¶20, Ex. G.)

JEAMEC has not paid the amount of property taxes unlawfully claimed by the City. JEAMEC was well aware at the time it filed its claim that § 74.35(5)(c) requires taxes to be paid before filing a § 74.35 claim with the City. JEAMEC expressly brought this requirement to the attention of the City and requested that in light of the church’s inability to pay the disputed taxes, the City waive the pre-payment requirement and consider the merits of its claim. (Compl. ¶19, Ex. F.)

The City did so. In April, 2012, the Common Council of the City of Milwaukee considered and “duly disallowed” JEAMEC’s claim. (Compl. ¶21, Ex. H.) JEAMEC’s claim

was disallowed in the normal course of the City's consideration of property tax disputes, along with the claims of numerous other property owners who claimed exempt status or excessive taxation. (Compl. ¶23; Compl. Ex. H.)

Wis. Stat § 74.35(3)(d) provides that "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." JEAMEC timely commenced this action in July, 2012.

Although the Common Council considered and disallowed JEAMEC's claim, the City now takes the position that the Circuit Court must dismiss the complaint because JEAMEC has not paid the taxes, interest, and penalties that the City says are due. It is, however, undisputed that JEAMEC does not have the money to pay the taxes in question. (Compl. ¶27.) The City's position, if upheld, would leave JEAMEC with the right to a tax exemption but no remedy for the City's unlawful attempt to collect taxes on property that should be exempt from taxation.

### **ARGUMENT**

The City's Motion curtly offers four separate theories to dismiss all or some of JEAMEC's claims, devoting a literal handful of sentences to each argument. Nowhere does the City even relate the standard for motions to dismiss, much less attempt to apply that standard to the pleadings in this case. Application of that standard to the facts set forth in the Complaint demonstrates that the City's arguments are without merit. This Court should deny the City's Motion

First, because the City considered and "disallowed" JEAMEC's claim, JEAMEC may file this lawsuit regardless of any defect in procedures before the City. Second, JEAMEC has served the Attorney General, mooting the City's argument that JEAMEC may not challenge the

constitutionality of § 74.35. Third, the City makes no other argument that this Court cannot hear JEAMEC's claims challenging the constitutionality of § 74.35(2m).

### **Motion to Dismiss Standard**

Wisconsin appellate courts have frequently cautioned trial courts to dismiss complaints only in the most obviously meritless cases. "A motion to dismiss a complaint for failure to state a claim tests the legal sufficiency of the complaint." *Watts v. Watts*, 137 Wis. 2d 506, 512, 405 N.W.2d 303 (1987). "All facts pleaded and all reasonable inferences therefrom are admitted as true . . . ." *Id.* All attachments to the complaint must be assumed to be true as well. *Peterson v. Volkswagon of Am., Inc.*, 2005 WI 61, ¶15, 281 Wis. 2d 39, 697 N.W.2d 61. A court may not grant a motion to dismiss "unless it appears certain that no relief can be granted under any set of facts that a plaintiff can prove in support of his or her allegation. *Id.*, ¶16 (quoting *Watts*, 137 Wis. 2d at 512). "As such, courts are to liberally construe a complaint and should deny a motion to dismiss when the facts alleged, if proven true, would constitute a cause of action." *Id.* "Dismissal of a claim is improper if there are any conditions under which the plaintiffs could recover." *Doe v. Archdiocese of Milwaukee*, 211 Wis. 2d 312, 331, 565 N.W.2d 94 (1997).

#### **I. Section § 74.35(5)(c) Does Not Prevent JEAMEC from Bringing this Action**

Section 74.35(5)(c) does not operate as a bar to bringing this "action" in circuit court under § 74.35(3)(d). Even if that were not the case, because the City considered and disallowed JEAMEC's claim, it has waived, forfeited, and is estopped from asserting § 74.35(5)(c) as a defense at this point in the proceedings.

Under either circumstance, the City's motion to dismiss must be denied. The City is wrong as a matter of law that a property owner's failure to pay a disputed tax deprives a circuit

court of competency to hear a § 74.35(3)(d) action. Furthermore, the fact-sensitive nature of a claim of waiver, forfeiture, or estoppel makes dismissal on the pleadings inappropriate.

A. JEAMEC May Commence this Action in Circuit Court Under § 74.35(3)(d) Because the City “Disallowed” JEAMEC’s Claim

The City argues that this Court “lacks competency to proceed under Wis. Stat. § 74.35” because JEAMEC “did not pay their taxes.” (Def.’s Mot. to Dismiss, 3.) “[B]y failing to allege compliance with the condition precedent of timely payment of the taxes,” the City argues, “the plaintiffs fail to state a claim upon which relief can be granted.” (*Id.*)

The City mistakenly conflates a “claim” with an “action” as the two terms are used in § 74.35. Section 74.35 creates a two-step process for challenging tax exemption denials; a “claim” filed with the taxation district and an “action” filed with the circuit court. The statute repeatedly uses “claim” to describe the process of asking the taxation district to reconsider a mistaken decision on an exemption denial:

- “A person aggrieved . . . may file a claim” § 74.35(2)(a) (emphasis added).
- “A claim filed under this section shall meeting all of the following conditions: . . . 2. State the alleged circumstances giving rise to the claim, including the basis for the claim. . . 3. State as accurately as possible the amount of the claim. 4. Be signed by the claimant.” § 74.35(2)(b) (emphasis added).
- “[T]o ‘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.” § 74.35(3)(a) (emphasis added).
- “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.” § 74.35(3)(b) (emphasis added).

However, when referring to the process using to challenge a taxation district’s denial of a claim in court, the statute uses the word “action,” and does so in direct contrast to a “claim” brought with the taxation district: “If the taxation district disallows a 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.” § 74.35(3)(d) (emphasis added). These sentences would be nonsensical if “claim” and “action” were synonymous. See *State v. Jensen*, 2010 WI 38, ¶14, 324 Wis. 2d 586, 782 N.W.2d 415 (“Statutes must be interpreted reasonably, to avoid absurd or unreasonable results, [a]nd, where possible, an interpretation must give effect to every word in the statute to avoid surplusage.” (citation omitted); *Pawlowski v. Am. Fam. Mut. Ins. Co.*, 2009 WI 105, ¶22, 322 Wis. 2d 21, 777 N.W.2d 67 (“When the legislature chooses to use two different words, we generally consider each separately and presume that different words have different meanings.”).

Paying a disputed tax first is a condition precedent to filing a “claim” with the City, but is not a condition precedent to filing an “action” in the circuit court. Section § 74.35(5)(c) states that “[n]o claim may be filed or maintained under this section unless the tax for which the claim is filed . . . is timely paid.” It does not state that “no action may be commenced in the circuit court under this section unless the tax for which the action is filed is timely paid.” Section 74.35(5)(a), (c) and (d) lay out three conditions precedent<sup>1</sup> on “claims” but none on “actions.” The only conditions precedent on an “action” commenced in circuit court are that the taxation district first disallow the claim and the action be commenced within 90 days of that disallowance. § 74.35(3)(d).

This interpretation is borne out by the Legislature’s choice of language used in a parallel statute, § 74.37. Section 74.37, entitled “Claim on excessive assessment” immediately follows § 74.35 and has a nearly identical parallel structure. Both Sections begin with a definitions subsection, §§ 74.35(1), 74.37(1), continue on to a subsection detailing how to file a “claim” with the taxation district, §§ 74.35(2), 74.37(2), continue on to a subsection setting out how to

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<sup>1</sup> Paragraph (5)(b) creates a longer statute of limitations for claims that taxes were paid to the “wrong taxation district.” Wis. Stat. § 74.35(5)(b).

“allow” and “disallow” a “claim” and commencing an “action” in circuit court, §§ 74.35(3), 74.37(3), and continue on to a subsection listing a number of conditions limiting the circumstances under which that Section can be used, §§ 74.35(5), 74.37(4)<sup>2</sup>. However, in those limitations subsections, § 74.37 continually uses the phrase “no claim or action” where § 74.35 continually uses the phrase “no claim” or “a claim.” *Compare* § 74.35(5) *with* § 74.37(4) (emphasis added).

A court should not presume that the different language used in parallel, highly similar, sequential statutes, was accidental. *Jensen; Pawlowski, supra*. If the Legislature said “no claim” may be filed unless taxes are paid under § 74.35, that is what they meant, not that “no claim or action” may be filed unless taxes are paid.

In this case, the City permitted JEAMEC’s claim to be “filed” and then “disallowed” it. This is clear from the wording of the Common Council’s Resolution. The City’s letter to JEAMEC’s counsel used the exact language found in § 74.35(3) – “You are hereby notified that the Common Council of the City of Milwaukee has duly disallowed the claim(s) filed by you. No action on your claim against the City of Milwaukee may brought after ninety (90) days from the date of service of this Notice of Disallowance.” (Compl. Exs. H, I (emphasis added).) JEAMEC commenced this action within 90 days of that disallowance, so the two conditions precedent to an action under § 74.35(3)(d) are met.

Although JEAMEC did not pay the disputed taxes before filing its “claim” with the City, the City chose to disregard that defect and continue with its ordinary procedures. The City accepted JEAMEC’s filed claim, processed it along with over a hundred other claims, and duly disallowed it. When the City explained its reasoning for disallowing JEAMEC’s claim, it did not

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<sup>2</sup> Both Sections contain a subsection related to interest charged on overdue taxes, appearing in subsection (5) in § 74.35 and subsection (4) in § 74.37, which explains the slight difference in subsection numbering between the two Sections.

even mention JEAMEC's failure to pay the disputed taxes; rather, it focused on the merits of whether JEAMEC's use of the property met the statutory requirements for an exemption. (*See* Compl. ¶¶24-25, Ex. J.) JEAMEC has met all the conditions precedent to filing such an action; nothing more is necessary for JEAMEC to have the right to commence this action in circuit court.

No court has ever held that first paying a disputed tax is a condition precedent on filing a § 74.35(3)(d) "action" in the circuit court. The City relies on *Wauwatosa Ave. United Methodist Church v. City of Wauwatosa*, 2009 WI App 171, 321 Wis. 2d 796, 776 N.W.2d 280,<sup>3</sup> but that case did not hold that paying the taxes first was a prerequisite to an "action," it stated that it was a prerequisite to a "claim." *Id.* at ¶28. Furthermore, that statement is pure dicta, as the property owner in that case had paid its tax and was seeking a refund. *Id.* at ¶5. The court was only using that statutory language to conclude "that § 74.35 does not require the City to hold a public hearing on the issue of whether the church custodian's residence should be tax-exempt." *Id.* at ¶28.

B. JEAMEC's Claim that the City Waived, Forfeited, and Is Estopped from Asserting § 74.35(5)(c) as a Defense May Not Be Disposed of on a Motion to Dismiss

The City also argues that JEAMEC's "Fourth Claim erroneously refers to a tax year [2009] not part of its Complaint and should be disregarded." (Def.'s Mot. to Dismiss, 4.) This is simply not true; the Complaint's Fourth Claim does not refer to 2009 taxes, nor does it claim that by cancelling the church's 2009 property taxes the City has waived anything at all.

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<sup>3</sup> The other case the City cites to in its discussion of this issue, *Heideman v. Am. Fam. Ins. Group*, 163 Wis. 2d 847, 473 N.W.2d 14 (Ct. App. 1991), merely states in a general nature that failure to comply with conditions precedent can, in some circumstances, deprive a court of competency to hear a case, *id.* at 859-60. As noted above, the only conditions precedent to commencing a § 74.35(3)(d) "action" in circuit court are disallowance of the "claim" by the taxation district and commencing the "action" within 90 days of that disallowance. JEAMEC has met those conditions precedent.

The City's claim that JEAMEC "grossly misstates the facts" by claiming that the City has waived<sup>4</sup> JEAMEC's outstanding property taxes shows that the City has not carefully read JEAMEC's complaint.<sup>5</sup>

JEAMEC is not claiming that the City's waiver of 2009 taxes resulted in a waiver of § 74.35(5)(c)'s "pay first" requirement as to tax years 2010 and 2011. JEAMEC is claiming that the City's decision to process JEAMEC's 2010 and 2011 "claim" under § 74.35 (even going so far as to label it a § 74.35 claim, *in spite of* JEAMEC's failure to pay its taxes) resulted in the City's waiving § 74.35(5)(c) as a defense in this "action." Paragraph 57 of the Complaint refers to the City's April 11, 2012, Resolution, File Number 111620, (Compl. Exs. H, I), which "duly disallowed" JEAMEC's § 74.35 claim.

No Wisconsin court has ever held as a matter of law that a taxation district may not waive the § 74.35(5)(c) "pay first" requirement. Because waiver is a highly fact-sensitive inquiry, it would be inappropriate for a court to conclude, as a matter of law, that JEAMEC cannot obtain relief "under any set of facts" that it could prove. *See, e.g., Royster-Clark, Inc. v. Olsen's Mill, Inc.*, 2006 WI 46, ¶21, 290 Wis. 2d 264, 714 N.W.2d 530 ("Waiver involves an inquiry into intent of the parties," and while "the intent to waive may be inferred as a matter of law from the conduct of the parties," it "is to be determined as a question of fact where the inference does not conclusively arise as a matter of law.") (citations and footnotes omitted); *Davies v. J.D. Wilson Co.*, 1 Wis. 2d 443, 468, 85 N.W.2d 459, 472 (1957) ("The existence of the intention to waive the right or advantage in question . . . is generally a question of fact. Where the intention is

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<sup>4</sup> Although JEAMEC's complaint makes distinct arguments for waiver, forfeiture, and estoppel, for simplicity's sake we refer to those three concepts here simply as "waiver." Because JEAMEC need not prove at this juncture that the City did in fact, waive, forfeit, or become estopped from asserting § 74.35(5)(c) as a defense – only establish that under some hypothetical set of facts, JEAMEC could prove waiver, forfeiture, or estoppel – detailing the legal distinctions between the three doctrines is unnecessary.

<sup>5</sup> It may also reveal that the City is not paying close attention to the rules governing a motion to dismiss. JEAMEC's factual averments must be assumed to be true. *Peterson*, 2005 WI 61, ¶15.

disputed, it necessarily becomes a question for the determination of the jury; it is for the jury to say what the conduct of the party against whom a waiver is claimed means or signifies.”) (quoting 31 C.J.S. Estoppel, § 163b, 463, 464).

## **II. JEAMEC Has Served the Attorney General**

The City argues that JEAMEC’s constitutional claims must be dismissed because “the Wisconsin Attorney General has not been served.” (Def.’s Mot. to Dismiss, 2.)

The Attorney General has since been served. On or about October 3, 2012, Assistant Attorney General Kevin C. Potter sent a letter to this Court indicating that his office “has been furnished with a copy of certain pleadings in [this case]” and has “decided not to appear in this matter at this time.” CCAP confirms that this Court received a copy of that letter on October 5, 2012.

Counsel for the City has informed counsel for JEAMEC that it intends to withdraw this argument for the dismissal of JEAMEC’s constitutional claims. Whether or not it does so, the argument is plainly moot.

## **III. The City Makes No Other Argument for the Dismissal of JEAMEC’s Constitutional Claims**

Without its claim that JEAMEC’s failure to serve the Attorney General with notice of this lawsuit challenging the constitutionality of a state statute, the City has no remaining argument that JEAMEC’s three constitutional challenges to Wis. Stat. § 74.35(2m) should be dismissed. JEAMEC has standing to bring such a challenge, whether or not it has paid the taxes in question,<sup>6</sup> and no court has issued an opinion on the constitutionality of § 74.35(2m). *Cf. Tops*

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<sup>6</sup> “[A] litigant advancing a constitutional claim must have suffered an actual injury to a legally protected interest [and t]he law of standing in Wisconsin is construed liberally.” *McConkey v. Van Hollen*, 2010 WI 57, ¶15, 326 Wis. 2d 1, 783 N.W.2d 855. JEAMEC is injured by § 74.35(2m) because that provision of law ostensibly prohibits JEAMEC from challenging the unlawful taxation of its property unless it first pays the disputed taxes. JEAMEC alleges this provision denies it due process of law, equal protection of the law, and its constitutional right to a remedy for harms it has suffered.

*Club, Inc. v. City of Milwaukee*, 2003 WI App 62, ¶6, 260 Wis. 2d 563, 659 N.W.2d 484 (noting that a “constitutional infirmity” could prohibit a court from applying § 74.35(2m) as written, but declining to address that issue because the property owner had not challenged the constitutionality of § 74.35(2m)).

Section § 74.35(2m) itself does not prohibit a declaratory judgment action challenging the constitutionality of § 74.35(2m). That statute provides:

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 declaratory judgment under s. 806.04.

§ 74.35(2m). This statute, by its plain language, has no application to a declaratory judgment action challenging the constitutionality of § 74.35(2m). It applies only to a legal claim that property is exempt from taxation.

If this Court rules that JEAMEC may not assert its substantive taxation claims because it has failed to pay the taxes in question, then the Court must consider JEAMEC’s constitutional challenges to that law. JEAMEC has made a good faith attempt to comply with the requirements of § 74.35 in order to bring all of its causes of action at the same time, so that the court may proceed efficiently, with an opportunity to decide the case on a narrower ground than declaring this statute unconstitutional.<sup>7</sup> But its constitutional claims cannot be dismissed simply because they come in tandem with other claims.

**IV. If Either JEAMEC’s Constitutional Claims or Its § 74.35(3)(d) Claim Survives, the Case May Proceed to JEAMEC’s Tax Exemption Denial Claims**

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<sup>7</sup> Courts should “decide cases on the narrowest possible grounds and should not reach constitutional issues if [they] can dispose of the [case] on other grounds.” *Miesen v. DOT*, 226 Wis. 2d 298, 209, 594 N.W.2d 821 (Ct. App. 1999).

Even if JEAMEC fails to convince this court that it has the right to challenge the tax exemption denial under § 74.35(3)(d), it has the right to challenge § 74.35(2m) as unconstitutional and may therefore proceed with this declaratory judgment action under § 806.04. Thus, JEAMEC's claims challenging the unlawfulness of the City's tax exemption denial (Compl., 5<sup>th</sup> and 6<sup>th</sup> Claims) should not be dismissed, so long as either its § 74.35(3)(d) action (Compl., 4<sup>th</sup> Claims) or constitutional claims (Compl., 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Claims) remain.

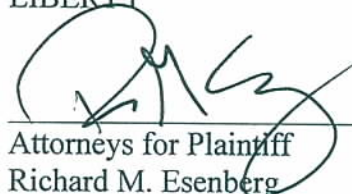
### CONCLUSION

For the foregoing reasons, this Court should deny the City's Motion to Dismiss and order the Defendant to file an Answer.

Dated this 1st day of November, 2012.

Respectfully submitted,

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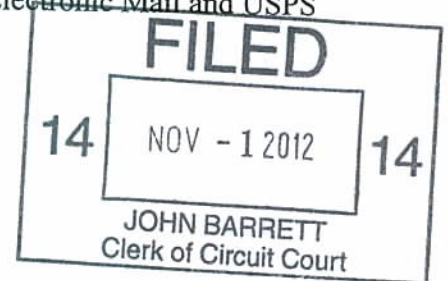
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**CERTIFICATION**

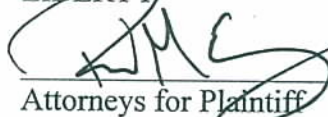
I hereby certify that a copy of the Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss has been served on the following parties as of this date via Electronic Mail and USPS First Class Mail.

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Dated this 1st day of November, 2012.

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