

STATE OF WISCONSIN**CIRCUIT COURT****MILWAUKEE**

Ascension SE Wisconsin Hospital, Inc. vs. City of
Wauwatosa

**Electronic Filing
Notice**

Case No. 2025CV006472
Class Code: Money Judgment

FILED

07-28-2025

Anna Maria Hodges
Clerk of Circuit Court
2025CV006472
Honorable Thomas J.
McAdams-07
Branch 7

CITY OF WAUWATOSA
7725 WEST NORTH AVENUE
MILWAUKEE WI 53213

Received by

AUG 01 2025

City Clerk's Office

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Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4140.

Milwaukee County Circuit Court
Date: July 28, 2025

8/1/25
10:11 AM
JA

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STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

ASCENSION SE WISCONSIN HOSPITAL, INC.
5000 West Chambers Street
Milwaukee, WI 53210,

Plaintiff,

v.

Case No. _____
Money Judgment - 30301

CITY OF WAUWATOSA
7725 West North Avenue
Wauwatosa, WI 53213,

Defendant.

SUMMONS

STATE OF WISCONSIN:

To each entity named above as Defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 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 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 or electronically filed with the Court, whose address is 901 North 9th Street, Milwaukee, Wisconsin 53233, and to plaintiff's attorneys, Reinhart Boerner Van

Deuren s.c., whose address is 1000 North Water Street, Suite 1700, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the 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 28th day of July, 2025.

Reinhart Boerner Van Deuren s.c.
1000 North Water Street
Milwaukee, WI 53202
Telephone: 414-298-1000
Facsimile: 414-298-8097

Mailing Address:
P.O. Box 2965
Milwaukee, WI 53201-2965

Electronically signed by Kristina E. Somers

Kristina E. Somers
State Bar ID No. 1026028
Sara Stelpflug Rapkin
State Bar ID No. 1076539
Shawn E. Lovell
State Bar ID No. 1079801
Attorneys for Plaintiff

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STATE OF WISCONSIN
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ASCENSION SE WISCONSIN HOSPITAL, INC.
5000 West Chambers Street
Milwaukee, WI 53210,

Plaintiff,

v.

Case No. _____
Money Judgment - 30301

CITY OF WAUWATOSA
7725 West North Avenue
Wauwatosa, WI 53213,

Defendant.

COMPLAINT

Plaintiff Ascension SE Wisconsin Hospital, Inc. f/ka/ Wheaton Franciscan, Inc. (the "Plaintiff"), by its undersigned counsel, Reinhart Boerner Van Deuren s.c., for its Complaint against the defendant the City of Wauwatosa (the "City"), alleges as follows:

NATURE OF ACTION AND PARTIES

1. This action is brought under Wis. Stat. § 74.35, for a refund of unlawful taxes imposed on Plaintiff by the City for the year 2024, plus statutory interest, with respect to a parcel of real property (the "Property") in the City.
2. Plaintiff is a Wisconsin nonstock, nonprofit corporation with its principal place of business at 5000 West Chambers Street, Milwaukee, Wisconsin 53210.
3. Plaintiff is the owner of the Property.
4. Plaintiff is responsible for the payment of property taxes and the prosecution of property tax disputes involving the Property.

5. Plaintiff is authorized to bring this claim in its own name.

6. The City is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 7725 West North Avenue, in the City.

7. The Property is located at 201 N. Mayfair Road within the City and is identified in the City's records as Parcel No. 411-9976-007.

JURISDICTION AND VENUE

8. The Court has personal jurisdiction over the City pursuant to Wis. Stat. § 801.05(1).

9. Venue is appropriate in Milwaukee County pursuant to Wis. Stat. § 801.50(2)(a).

BACKGROUND FACTS AND REFUND CLAIM

10. For 2020, the Property was treated as approximately 63.10% exempt.

11. For 2021 through 2024, the City no longer treated the Property as partially exempt, instead treating it as fully taxable.

12. Plaintiff timely filed with the City a Property Tax Exemption Request for the Property for tax year 2024.

13. For 2024, the City's assessor set the assessment of the Property at \$77,400,000.

14. For 2024, the City imposed tax on the Property in the amount of \$1,742,915.48.

15. The use, occupancy and ownership of the Property did not change from 2020 to 2024.

16. The Property qualifies for partial exemption, 64.54% exemption, under Wis. Stat. § 70.11, including and without limitation, Wis. Stat. § 70.11(4m) as real property owned and used 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.

17. As the Property was exempt by law from taxation, the 2024 assessment and taxes imposed by the City on the Property constituted “palpable errors” within the meaning of Wis. Stat. § 74.33(1)(c).

18. Taxes with respect to property that was exempt by law from taxation are unlawful taxes pursuant to Wis. Stat. § 74.35(1).

19. As an additional ground and upon information and belief, the City’s failure to exempt the Property violates Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution.

20. Milwaukee County Circuit Court Case Nos. 04-CV-6458 and 06-CV-5558 related to the same Property at issue here.

21. The exempt status of the Property was extensively litigated over the course of nine days of trial between August 2007 and February 2008, post-trial proceedings, post-trial briefs, closing arguments, and letter briefs.

22. The proceedings resulted in a 72-page Decision and Order (the “Decision”) signed by Judge Elsa Lamelas on March 30, 2009.

23. The Decision concluded that the Property qualified for exemption under Wis. Stat. § 70.11(4m).

24. The Decision was appealed, with the Wisconsin Supreme Court affirming the decision of the Circuit Court and concluding that the Property qualified for exemption in 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906.

25. Subsequent to the court decisions, the City treated the property as partially exempt, including in 2020 when the City treated the Property as 63.10%.

26. Issue preclusion applies as the exempt status of the Property was extensively litigated and determined by the prior court decisions, the parties are the same, and it is fundamentally fair to apply issue preclusion here as there have been no material changes to the use, occupancy or ownership of the Property since the prior decisions.

27. Plaintiff timely paid the property taxes imposed by the City on the Property for 2024.

28. On January 30, 2025, Plaintiff timely and personally served on the City Clerk a Claim for Unlawful Taxes pursuant to Wis. Stat. § 74.35 (the “2024 Claim”). A true and correct copy of the 2024 Claim is attached hereto as **Exhibit A** and is incorporated herein by reference.

29. The City failed to respond to the 2024 Claim. Therefore, the 2024 Claim is deemed disallowed.

CLAIM FOR RELIEF

30. The allegations of paragraphs 1-29 are incorporated as if fully re-alleged herein.

31. Taxes with respect to property that was exempt by law from taxation are “unlawful taxes” pursuant to Wis. Stat. §§ 74.35(1) and 74.33(1)(c).

32. The 2024 assessment as determined and set by the City resulted in unlawful taxes imposed on Plaintiff as this assessment included the value of the exempt Property.

33. As an additional ground and upon information and belief, the City’s failure to exempt the Property violates Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution.

34. As a further ground, issue preclusion applies requiring that the Property be treated as 64.54% exempt for 2024.

35. Plaintiff is a person aggrieved by the levy and collection of unlawful taxes assessed against the value of the Property by the City, and is, therefore, entitled to a refund of the taxes pursuant to Wis. Stat. § 74.35(2), together with interest as provided by Wis. Stat. § 74.35(4).

36. With respect to the 2024 Claim, Plaintiff is entitled to a refund of 2024 taxes for the Property in the amount of \$1,476,869.52, or such greater amount as may be determined to be due to Plaintiff, plus statutory interest.

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. A determination that the Property was 64.54% exempt for 2024.
- B. Judgment in the amount of \$1,476,869.52, or such greater amount as may be determined due to Plaintiff, plus statutory interest;
- C. An award of all litigation costs incurred by Plaintiff in this action, including the reasonable fees of its attorneys; and
- D. Such other and further relief as the Court deems appropriate and just.

Dated this 28th day of July, 2025.

Reinhart Boerner Van Deuren s.c.
1000 North Water Street
Milwaukee, WI 53202
Telephone: 414-298-1000
Facsimile: 414-298-8097

Mailing Address:
P.O. Box 2965
Milwaukee, WI 53201-2965

54285818

Electronically signed by Kristina E. Somers

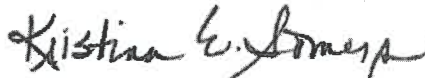
Kristina E. Somers
State Bar ID No. 1026028
Sara Stelpflug Rapkin
State Bar ID No. 1076539
Shawn E. Lovell
State Bar ID No. 1079801
Attorneys for Plaintiff

Steven Braatz, Clerk
January 30, 2025
Page 2

7. The Claimant timely filed a 2024 Property Tax Exemption Request with the Assessor's Office.
8. For 2024, the assessment of the Property was set at \$77,400,000.
9. The City imposed tax on the Property in the amount of \$1,742,915.48.
10. The use, occupancy, and ownership of the Property did not change in any material way from 2020 to 2024.
11. The Property qualifies for partial exemption (64.54% exemption) under Wis. Stat. § 70.11, including and without limitation Wis. Stat. § 70.11(4m) as real property owned and used 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.
12. As the Property was exempt by law from taxation as stated above, the 2024 assessment and taxes imposed by the City on the Property constituted a palpable error within the meaning of Wis. Stat. § 74.33(1) and resulted in unlawful taxes pursuant to Wis. Stat. § 74.35(1).
13. As an additional ground and upon information and belief, the City's failure to exempt the Property violates Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution.
14. Claimant has timely paid or will timely pay the property taxes or authorized installments thereof imposed by the City on the Property for 2024.
15. Claimant is entitled to a refund of 2024 taxes in the amount of \$1,476,869.52, or such greater amount as may be determined to be due to Claimant, plus statutory interest.
16. The amount of this claim is \$1,476,869.52, plus interest thereon.

Dated at Milwaukee, Wisconsin, this 30th day of January, 2025.

Sincerely yours,



Kristina E. Somers
Agent for Claimant