

WMC: Sues Village of Pewaukee for illegally enacting a transportation tax

Posted on Monday, Apr 11, 2022

>> **WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

PEWAUKEE - Wisconsin Manufacturers & Commerce (WMC) – the combined state chamber and manufacturers’ association – filed a lawsuit on Thursday with the Village of Pewaukee for its unlawful and invalid “transportation user fee” that disproportionately raises costs for businesses operating in the Village. Pewaukee enacted its transportation fee last year. It charges all utility accounts a base fee of \$15.74 and an additional usage fee determined by the number of trips assigned to that property. However, the revenue generator operates outside of local government levy limits put in place by the State Legislature, along with violating a number of other laws.

“Not only are our members seeing costs go up thanks to record-breaking inflation, now they are being hit with an illegal tax that would make matters even worse,” said WMC Executive Vice President of Government Relations Scott Manley. “In simple terms, this transportation user fee is just an additional tax on property owners that violates both state law and the constitution’s uniformity clause.”

WMC’s lawsuit makes four claims in its complaint:

- The transportation user fee is an illegal tax: This “fee” is a tax, and nothing in state law authorizes this type of tax. Thus, it is illegal.
- It is an unconstitutional property tax: The Wisconsin Constitution requires the taxing of real property to be uniform for all classes of property. The base fee is a flat-dollar amount no matter the value of the property, so it violates the uniformity clause. The usage fee is not based on a uniform mill rate, and therefore violates the uniformity clause, too.

- It is illegal, even if it is defined as a fee rather than a tax: A municipality may not impose such a fee without statutory authorization, and Pewaukee does not have express or implied authority.
- It is preempted by state law: The “transportation user fee” is inconsistent with or violates the spirit of numerous state laws relating property tax levy limits, allowable flat registration fees and special assessments for transportation projects. Therefore, it is illegal.

“Local governments have a number of ways to raise additional revenue for their budgets, but they must do it in a way that follows the law,” added Manley. “In this case, Pewaukee is attempting to raise taxes on its residents and business owners with no authority to actually do so.”

WMC sent a notice of claim to the Village of Pewaukee on this issue last October, and its claim was denied in December. Following the denial, WMC filed a lawsuit in the Waukesha County Circuit Court requesting that the Village of Pewaukee’s “transportation user fee” be declared unlawful and invalid. Additionally, WMC is requesting an injunction prohibiting the Village from levying, enforcing or collecting such a fee.

[Click here to read the full complaint.](#)