



Finance Department

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To: Mayor Soglin
Board of Estimates Members

From: David Schmiedicke
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Michael May
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Subject: Report on Wisconsin Department of Revenue Sales Tax Audit of City of Madison

Background

Over the past several months, the Department of Revenue conducted an audit of taxable sales made by the City of Madison and the Overture Center between 2008 and 2011.

The audit identified areas within three City agencies (Parks, Senior Center and Monona Terrace) where sales taxes were not collected for certain activities. It also identified certain activities within the Overture Center, including the facilities fee, for which sales taxes were not collected. The Overture Center is included in the audit because the City of Madison filed the sales tax reports on behalf of Overture while acting as fiscal agent for the Madison Cultural Arts District (MCAD), which operated the Overture Center prior to January 1, 2012.

In order to stop the continued accumulation of interest and avoid delinquent penalty fees for the City agencies and the Overture Center, while preserving the City's right to appeal the audit findings, the City paid the entire amount of the sales taxes and interest costs to date on August 6, 2013. The table below shows the amounts associated with each City agency and the Overture Center. The City does not dispute the final audit findings regarding the affected City agencies.

	Taxable Sales	Share of Total	Estimated Sales Tax	Interest Cost	Total Payment
Monona Terrace	463,708.00	10.60%	25,503.94	8,367.85	33,871.79
Overture	893,028.00	20.41%	49,116.54	16,115.14	65,231.68
Overture Facility Fees	2,843,944.07	64.99%	156,416.92	51,320.42	207,737.34
Senior Center	14,948.00	0.34%	822.14	269.74	1,091.88
Warner Park	62,160.00	1.42%	3,418.80	1,121.71	4,540.51
Olbrich Garden	98,100.00	2.24%	5,395.50	1,770.26	7,165.76
	4,375,888.07	100.00%	240,673.84	78,965.12	319,638.97

The unpaid sales taxes constitute additional revenue received by the affected City agencies and the Overture Center. In other words, revenues were higher to the extent that taxes on sales that generated those revenues were not paid by the affected agencies and Overture Center. As such, revenue in 2013 for each of the affected City agencies will be reduced by the amount of the remitted sales taxes, and the associated interest costs have been charged against the current appropriations of those agencies. Amounts for the Overture Center were recorded as a receivable in the City's accounting system pending resolution of an appeal filed by the City regarding its responsibilities for Overture Center sales taxes.

Legal Basis for Appeal of City Responsibility for Overture Center Sales Taxes

The basis for the City's appeal is that the audit concludes that the Overture Center was a department of the City and that the "Overture Center was operated by the City through December 31, 2012."

The Overture Center was not operated by the City. It was operated by the Madison Cultural Arts District (MCAD), a separate governmental body formed pursuant to sec. 229.842, Wis. Stats., until December 31, 2011. Pursuant to sec. 229.842, MCAD is empowered to operate a cultural arts facility like the Overture Center, and to establish and collect fees and other charges. The City has provided the Department of Revenue with the Operation and Cooperation Agreement between MCAD and the City. Under Article I, sec. 1 of that Agreement, MCAD was "solely responsible for, and shall pay any and all costs associated with the operation and management of the Overture Center" Although the City acted as fiscal agent for MCAD, the City's sole role was to report and file the information provided by MCAD, the operator of the Overture Center. The City never operated the Overture Center, never collected the revenues, and never engaged in the activities that resulted in the imposition of the tax. Overture Center has been owned by Overture Development Corporation (ODC) since the City and other parties conveyed the property to ODC in 2001

The City's position is that any amounts due from the Overture Center prior to December 31, 2011, must be sought from MCAD.

Alternatively, the City's position is that the Department of Revenue must seek amounts due from Overture from the Overture Center Foundation (OCF) as the successor of MCAD under Wis. Adm. Code TAX 11.91. On January 1, 2012, operation of the Overture Center was turned over to OCF, a new legal entity, a private sec. 501(c)(3) organization. OCF succeeded to the assets of MCAD and continues to operate the Overture Center. OCF arranged for payments to creditors of MCAD in order to obtain ownership of Overture Center.

The City's alternative position is that any amounts due from the Overture Center must be sought from OCF as the successor of MCAD.

Next Steps

The Department of Revenue will review the appeal and render its decision. In the event that the City's appeal fails, it can bring the matter to the Wisconsin Tax Appeals Commission, and ultimately to the state court system.

If the City is ultimately held responsible for paying the Overture Center sales taxes and interest costs, it will be necessary for the Common Council to adopt a resolution authorizing the allocation of City revenues to remove the receivable from the city's financial statements.