



Legislation Text

File #: 01349, **Version:** 1

Fiscal Note

Under the terms of this proposed settlement, the City will be required to make a payment of \$2,775,000 to American Family within 30 days of approval of the settlement, covering the full amount of tax overpayments to all taxing jurisdictions for 2002, 2003 and 2004. The City's share of this settlement, estimated to be \$933,000, will result in reduced 2005 General Fund revenues. The remaining \$1,842,000 will be recognized as a receivable from the other taxing jurisdictions and will be repaid to the City during 2006, in accordance with Wisconsin Department of Revenue procedures governing such property tax adjustments.

Sufficient funds are available in the City's General Fund Balance to finance this transaction and there is no impact on the City's limit imposed under the state's Expenditure Restraint Program.

The American Family properties involved in this settlement were assessed at \$151,500,000 as of January 1, 2004. The agreement reduces that assessment to \$99,000,000 as of January 1, 2005. Based on the most recent (2004) City mill rate, this adjustment will result in reduced future City property tax revenues of roughly \$400,000 per year from American Family.

Title

Approving a settlement of property tax litigation with American Family, authorizing the Mayor and City Clerk to sign settlement documents authorizing a payment of \$2,775,000 from City resources to effectuate the approved settlement, and amending the 2005 Operating Budget to reduce estimated General Fund revenues by \$933,000 to recognize the City's share of settlement costs.

Body

BACKGROUND

The City of Madison and American Family Mutual Insurance Company have been litigating the property tax assessments for the American Family headquarters. At issue in the multiple lawsuits that American Family has filed are the tax assessments for 2002, 2003, and 2004. In addition, American Family recently challenged its 2005 property tax assessment, and that challenge is headed for litigation.

Several of the cases were scheduled for trial this July. In late April and early May, representatives of American Family and the City engaged in a mediation of the cases. Attorney Mark Frankel, a former Dane County Circuit Court Judge, served as the mediator. The City was represented by outside counsel Robert Horowitz, City Attorney Michael May, and Chief Assessor Mike Kurth. The mediation consumed two complete days. Prior to the mediation, the City had concluded that a significant refund likely would be due to American Family if the cases were tried. The issue at trial would focus more on the amount of the refund, not whether one was due.

The mediation resulted in a settlement in principle that included the following elements:

1. The City of Madison would pay to American Family a refund of property tax for the years 2002 through 2004 of \$2,775,000.
2. The refund represents tax only without interest and American Family would waive any right to interest.
3. The City Assessor would establish an assessment of \$99 million for the American Family properties for 2005 and American Family would withdraw its challenge to the 2005 assessment.
4. The settlement must be approved by the City Council and Mayor on or before July 29, 2005, or it is deemed rejected by the City.
5. The trial would be moved to this fall to accommodate the parties' completion of the settlement, and if the settlement is approved, the trial will be cancelled and the cases dismissed.

The settlement figure represents taxes for all jurisdictions. The City of Madison must pay the full amount of the refund

and then file with the State Department of Revenue to be repaid the shares for other taxing jurisdictions. These other jurisdictions have been informed of the settlement and the estimated amount of the tax charge back. The City Attorney, City Assessor and City Comptroller all recommend that the City Council approve the settlement. The settlement amount is within the range of reasonableness, and avoids the costs and risks of full litigation. The City Attorney estimates that, if the case were tried and lost, the total amount that could have been payable to American Family could have been as much as \$4.5 million. The final settlement agreement will contain other standard settlement clauses related to release of claims, etc.

RESOLUTION

WHEREAS, the City of Madison and American Family are involved in tax litigation and disputes regarding the property tax assessment of the American Family headquarters for calendar years 2002, 2003, 2004 and 2005; and

WHEREAS, the City and American Family engaged in extensive mediation of the litigation and disputes; and

WHEREAS, the parties reached a tentative settlement of the litigation and disputes, subject to approval by the Common Council and the Mayor, the major terms of which are set out above; and

WHEREAS, the City Attorney, the City Assessor and the City Comptroller recommend approval of the settlement.

NOW, THEREFORE, BE IT RESOLVED:

1. That the settlement outlined in this resolution is approved by the Common Council and the Mayor and the City Clerk are authorized to execute any documents necessary to effectuate the settlement.
2. That the settlement documents shall be reviewed and approved by the City Attorney as to form.
3. That the Council authorizes a payment of \$2,775,000 from City resources to be paid to American Family to effectuate the settlement, with the City to file for reimbursement pursuant to Department of Revenue procedures.
4. That the 2005 Operating Budget be amended to reduce General Fund revenues by \$933,000 to recognize the City's share of settlement costs.