Legislation Details (With Text)

File #:	15799	**Version:**	1	**Name:**	Walgreen Tax Refund Settlement 2005-2008
Type:	Resolution			**Status:**	Passed
File created:	8/26/2009			**In control:**	COMMON COUNCIL
On agenda:	9/15/2009			**Final action:**	9/15/2009
Enactment date:	9/16/2009			**Enactment #:**	RES-09-00809

Title: Approving Settlement of Tax Refund Litigation with Walgreen Co. for Years 2005-2008, Authorizing Entry into Settlement Agreement, Approving payment of $495,000 from City resources to effectuate the Settlement and amending the 2009 Operating Budget to reduce estimated general fund revenues by $181,243 to recognize the City's share of Settlement Costs.

Sponsors: David J. Cieslewicz

Indexes:

Code sections:

Attachments: 1. Walgreen Settlement Res 14591.pdf

Date	Ver.	Action By	Action	Result
9/15/2009	1	COMMON COUNCIL	Adopt	Pass
9/15/2009	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
9/10/2009	1	COMMON COUNCIL	Refer to a future Meeting to Adopt	
9/1/2009	1	COMMON COUNCIL	Refer to a future Meeting to Adopt	Pass
8/26/2009	1	Attorney's Office	Referred for Introduction	

Fiscal Note

This resolution authorizes the City, pursuant to the proposed settlement agreement, to make a payment of $495,000 to Walgreen Co. as full refund of tax overpayments originally made to all taxing jurisdictions for two Walgreen properties for tax years 2005-2008. The City's share of the tax overpayments, $181,243, will result in reduced 2009 General Fund revenue. The remaining $313,757 will be recognized as a receivable from the other taxing jurisdictions and is expected to be repaid to the City in 2010 in accordance with Wisconsin Department of Revenue procedures governing such property tax adjustments.

Title

Approving Settlement of Tax Refund Litigation with Walgreen Co. for Years 2005-2008, Authorizing Entry into Settlement Agreement, Approving payment of $495,000 from City resources to effectuate the Settlement and amending the 2009 Operating Budget to reduce estimated general fund revenues by $181,243 to recognize the City's share of Settlement Costs.

Body

Background

The City of Madison and Walgreen Co. have been engaged in litigation over the assessment of a number of Walgreen's stores located in the City. The original litigation went to the Wisconsin Supreme Court, which rejected the City's method of appraisal and adopted Walgreen's methodology. *Walgreen Co. v. City of Madison,* 2008 WI 80, 311 Wis. 2d 158, 752 N.W. 2d 687 (2008). In that case, the Supreme Court ruled that, for property encumbered with a below market lease, the assessment must be reduced to reflect the lease, but that for property with an above market lease that enhances the value of the property, no adjustment may be made to the assessment. Pursuant to that Supreme Court decision, the City paid a judgment to Walgreen in

the amount of $247,790.55, as authorized by resolution File ID # 14591 (copy attached). That payment represented taxes and interest owed for tax years 2003 and 2004.

Subsequently, the City and Walgreen Co. entered into negotiations concerning outstanding pending lawsuits over other tax years. Walgreen had challenged tax years 2005-2009 in Dane County Circuit Court, but the cases were put on hold by agreement of the parties, pending resolution of the taxing assessment issue by the Wisconsin Supreme Court. In the judgment of the City Attorney and the Assessor, the City was unlikely to win those cases in light of the Supreme Court's adverse decision on the methodology for assessment.

The City Attorney and counsel for Walgreen Co. were able to reach a tentative agreement to settle four of the outstanding cases, tax years 2005-2008. This resolution seeks approval of the settlement and all other approvals necessary to carry it out, including adjusting the City's revenues.

The Proposed Settlement

Under the Settlement, Walgreen would be paid $495,000 for tax years 2005-2008 in full settlement of their claims for refunds. As part of the Settlement, Walgreen waives any claim to interest on the refunds. The City has estimated that litigation could result in judgments reaching over $600,000 against the City. The Settlement would result in the dismissal of the lawsuits for those years. This resolution authorizes the City Attorney to sign the Settlement Agreement on behalf of the City.

The Settlement figure is a negotiated sum, and does not identify an assessed valuation upon which the settlement is based, nor does it designate to which years the total sum is allocated. The assessment by the City for each of these years was a different amount. The settlement figure explicitly does not include any interest, which Walgreen waives. The settlement does not impact one final pending lawsuit for 2009, which has some different issues than the prior years, nor does it impact the potential of a dispute for 2010.

The City Attorney, the City Assessor, the City Comptroller and the City Treasurer all recommend approval of the proposed Settlement.

The City Attorney intends to pursue settlement discussions with Walgreen Co. on those outstanding matters, once this settlement is approved.

Necessary Authorizations

This resolution:

1. Approves the Settlement as outlined above.

2. Authorizes the City Attorney to sign the Settlement Agreement on behalf of the City.

3. Approves the payment of $495,000 from City resources to Walgreen to effectuate the Settlement, with Walgreen Co. waiving any right to interest on the payment.

4. Amends the 2009 Operating Budget to reduce estimated general fund revenues by $181,243 to recognize the City's share of Settlement Costs.

5. Authorizes the Assessor and other City staff to pursue the tax adjustments from other taxing jurisdictions pursuant to State law and Department of Revenue procedures.

Resolution

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WHEREAS, the City of Madison and Walgreen Co. have been involved in tax disputes and litigation for a number of years; and

WHEREAS, the City Attorney and Counsel for Walgreens have reached a proposed settlement of the dispute for tax years 2005-2008, which settlement the Common Council finds is in the best interests of the City; and

WHEREAS, the City Attorney, City Assessor, City Comptroller and City Treasurer all recommend approval of the Settlement as described in this resolution;

NOW, THEREFORE, BE IT RESOLVED, that the City of Madison approves the settlement with Walgreen Co. for tax years 2005-2008 as described above in this resolution; and

BE IT FURTHER RESOLVED, that the City Attorney is authorized to enter into the Settlement Agreement on behalf of the City with Walgreen Co. as described above in this resolution; and

BE IT FURTHER RESOLVED, that the Common Council authorizes the payment of $495,000 from City resources to be paid to Walgreen Co. in full settlement of the tax refund claims for years 2005-2008, and

BE IT FURTHER RESOLVED, that the Assessor and other City staff are authorized to file for reimbursement from other taxing jurisdictions pursuant to Wisconsin Department of Revenue procedures; and

BE IT FINALLY RESOLVED, that the City's Operating Budget for 2009 is amended to reflect reduced revenues of $181,243 to reflect the City's share of the Settlement Costs.

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