



Legislation Details (With Text)

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On agenda:	2/26/2013	Final action:		Final action:	2/26/2013
Enactment date:		Enactment #:			
Title:	Approving Settlement of tax refund litigation with Lamar Outdoor Advertising of Janesville for years 2004, 2006-2010, Approving payment of \$160,000 from City resources to effectuate the Settlement and amending the 2011 Operating Budget to reduce estimated general fund revenues by \$59,468.19 to recognize the City's share of Settlement Costs.				
Sponsors:	Paul R. Soglin				
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Date	Ver.	Action By	Action	Result
2/26/2013	1	COMMON COUNCIL	Place On File	Pass
2/19/2013	1	Attorney's Office	RECOMMEND TO COUNCIL TO PLACE ON FILE - REPORT OF OFFICER	
10/4/2011	1	COMMON COUNCIL	Refer	Pass
9/20/2011	1	COMMON COUNCIL	Re-refer to a Future Meeting to Adopt	Pass
9/12/2011	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT (15 VOTES REQUIRED) - REPORT OF OFFICER	Pass
9/6/2011	1	COMMON COUNCIL	Referred	
8/30/2011	1	Attorney's Office	Referred for Introduction	

Fiscal Note

This resolution authorizes the City, pursuant to a Settlement with Lamar Outdoor Advertising, to make a total payment of \$160,000 to Lamar as a full refund of tax overpayments originally made to all taxing jurisdictions for several Lamar billboard properties for the tax years 2004 and 2006 thru 2010. The City's share of the tax overpayments, estimated to be \$59,468.19, will result in reduced 2011 General Fund revenues. The remaining \$100,531.81 of tax overpayments will be recognized as a receivable from the other taxing jurisdictions and is expected to be repaid to the City during 2012, in accordance with Wisconsin Department of Revenue procedures governing such property tax adjustments.

Title

Approving Settlement of tax refund litigation with Lamar Outdoor Advertising of Janesville for years 2004, 2006-2010, Approving payment of \$160,000 from City resources to effectuate the Settlement and amending the 2011 Operating Budget to reduce estimated general fund revenues by \$59,468.19 to recognize the City's share of Settlement Costs.

Body

Background

The City of Madison and Lamar Outdoor Advertising of Janesville have been engaged in litigation for a number of years over the assessment of a number of billboards located in the City. The litigation involves tax years 2004, 2006-2010, all of which have the same legal issues involving the assessment of billboards that we have

faced with Adams Outdoor Advertising. These cases have been placed on hold while we litigated the same issues in *Adams Outdoor Advertising, Ltd. v. City of Madison*, 294 Wis.2d 441, 717 N.W. 2d 803 (2006). The Supreme Court in *Adams I*, rejected the City's methodology of assessing the billboards in relying solely on the income approach and including the value of the billboard permits. The Supreme Court in their ruling stated that the permit is an interest in real property, however that does not mean that the entire tax burden of the permit is transferred to the landowner where the billboard is located. Therefore, some portion of the tax burden remains with Adams. The case was then remanded back to the Circuit Court for reassessment to be consistent with the Supreme Court's decision.

The City Assessor reassessed the billboards in a manner in which we interpreted as consistent with the Supreme Court's decision in which, they included the value of the permit in the assessment to Adams, because the Supreme Court stated that the entire tax burden of the permit should not be placed upon the property owner. This approach was subsequently rejected by the Dane County Circuit Court and was appealed by the City to the Wisconsin Court of Appeals. *Adams Outdoor Advertising, Ltd. v. City of Madison*, 329 Wis.2d 270 (Wis. App. 2010) (*unpublished-Adams II*). The Court of Appeals rejected the City's reassessment because it continued to include the value of the billboard permits and adopted the Adams' assessments. However the Court did acknowledge that the Supreme Court's holding suggests that some portion of the tax burden of the permit remains with Adams and the method by which the City could tax Adams on the value of the permit is vague. Ultimately, the Court concluded that the Supreme Court's decision in *Adams I* did not allow for the method used in the City's reassessment. The City filed a Petition for Review of the Court of Appeals decision with the Wisconsin Supreme Court, which was subsequently denied. The City does not have any further legal remedies available to challenge these assessments in Adams and the legal issues in Lamar are identical to the issues raised in the Adams litigation.

In light of the Adams II decision, the City and Lamar have reached a tentative settlement for tax years 2004, 2006-2010. 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 proposed settlement, Lamar would be paid a total of \$160,000 for tax 2004, 2006-2010, with a dismissal of these years. Lamar has agreed to waive interest and costs. This resolution approves the settlement on behalf of the City.

The settlement figure represents a negotiated sum and does not identify an assessed valuation upon which the settlement is based, nor does it designate which years the total sum is allocated. The settlement figure is the total amount, there is no interest. The City's share of the settlement is \$59,468.19.

The City Attorney, the City Assessor, the City Finance Director and the City Treasurer all recommend approval of the proposed judgment and settlement.

Necessary Authorizations

This resolution:

1. Approves the settlement as outlined above.
2. Authorizes the City Attorney to execute documents to effectuate the settlement on behalf of the City.
3. Approves the payment of a total of \$160,000 to settle tax years 2004, 2006-2010.
4. Amends the 2011 Operating Budget to reduce estimated general fund revenues by \$59,468.19 to recognize the City's share of the settlement costs.
5. Authorizes the City Assessor and other City staff to pursue the tax adjustments from other taxing jurisdictions pursuant to State law and Department of Revenue procedures.

Resolution

WHEREAS, the City of Madison and Lamar Outdoor Advertising have been involved in tax disputes and litigation for a number of years; and

WHEREAS, the City Attorney and counsel for Lamar have reached a proposed settlement of the dispute for tax years 2004, 2006-2010, which settlement the Common Council finds is in the best interest of the City; and

WHEREAS, the City Attorney, City Assessor, City Finance Director 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 Lamar for tax years 2004, 2006-2010 as described above in this resolution; and

BE IT FURTHER RESOLVED, that the City Attorney is authorized to execute any documents to effectuate the settlement on behalf of the City with Lamar as described above in this resolution; and

BE IT FURTHER RESOLVED, that the Common Council authorizes the payment of \$160,000 from City resources to be paid to Lamar Outdoor Advertising in full settlement for tax years 2004, 2006-2010; 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 2011 is amended to reflect reduced revenues of \$59,468.19 to reflect the City's share of the settlement costs.