



Legislation Details (With Text)

**File #:** 34478      **Version:** 1      **Name:** Agreement as to sales tax liability with Overture Center Foundation, Inc.

**Type:** Resolution      **Status:** Passed

**File created:** 6/12/2014      **In control:** BOARD OF ESTIMATES (ended 4/2017)

**On agenda:** 7/15/2014      **Final action:** 7/15/2014

**Enactment date:** 7/16/2014      **Enactment #:** RES-14-00536

**Title:** Authorizing the Mayor and City Clerk to execute an agreement as to sales tax liability with Overture Center Foundation, Inc.

**Sponsors:** Michael E. Verveer

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
7/15/2014	1	COMMON COUNCIL	Adopt	Pass
7/7/2014	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
7/1/2014	1	COMMON COUNCIL	Referred	
6/12/2014	1	Attorney's Office	Referred for Introduction	

**Fiscal Note**

This resolution establishes responsibility for payment of sales taxes on activities of the Overture Center from 2008 to 2011. Under the agreement between the City and Overture Center Foundation, Inc. (OCF), payment of the sales taxes and interest will be split equally between the City and OCF. The City has already paid the entire amount of the sales taxes and interest to the Wisconsin Department of Revenue. OCF will reimburse the City for its share of this liability in five equal installments over the next five years (\$27,297 annually plus interest). The City's current investment earnings rate is approximately 0.5%. Under the agreement, 0.25% will be added to the annual interest rate, which will be calculated and applied to the remaining balance each August 1st. Assuming the investment portfolio earnings rate remains at 0.5% over the entire period of the repayment, total interest paid is estimated to be \$3,070.

**Title**

Authorizing the Mayor and City Clerk to execute an agreement as to sales tax liability with Overture Center Foundation, Inc.

**Body**

In 2013 the State of Wisconsin Department of Revenue (DOR) conducted a field audit of taxable sales made by the City of Madison and the Overture Center between 2008 and 2011. The audit identified certain activities within the Overture Center, including the facilities fee, for which sales taxes were not collected during those years. The Overture Center activities were included in the audit because the City filed the sales tax reports on behalf of Overture while the City was acting as fiscal agent for the Madison Cultural Arts District (MCAD) which operated the Overture Center prior to January 1, 2012. The Overture Center has been operated by Overture Center Foundation, Inc. (OCF) since 2012, and the City no longer acts as Overture's fiscal agent.

The audit found that sales taxes and interest totaling \$272,969.02 were due from the Overture Center

activities. In order to stop the accumulation of interest and delinquency payments on the amount due, the City made payment in full to DOR, and appealed the tax determination. DOR advised the City that it could find the City, MCAD, and/or Overture Center Foundation liable for the taxes, and encouraged those parties to resolve the matter. City and OCF representatives met and negotiated an agreement under which OCF would reimburse the City for half the tax payment (\$136,484.51), to be payable over a five-year period, with interest to be paid at the City's earning rate plus 0.25%.

Now therefore, be it resolved, that the Mayor and City Clerk are hereby authorized to execute an agreement as to sales tax liability with Overture Center Foundation, Inc. on the following terms and conditions, all in a form to be approved by the City Attorney:

1. OCF shall reimburse the City the sum of \$136,484.51, payable annually each August 15<sup>th</sup> beginning August 15, 2014 in five equal installments of \$27,296.90, together with interest on the unpaid balance equal to the City's earning rate plus 0.25%. The City shall calculate the interest each August 1<sup>st</sup> and notify OCF of the total amount due. Interest shall begin accruing August 1, 2014. The outstanding principal balance and all accrued interest thereon shall be payable on August 15, 2018.
2. OCF may prepay all or a part of the outstanding obligation at any time, without penalty.
3. Failure of OCF to make any payment in full or within 15 days of its due date shall result in a delinquency charge equal to 3% of the amount owing.
4. The Agreement is not an admission of liability by either OCF or the City.
5. The Agreement shall have no effect on the City grant to OCF, provided OCF is not in default under this Agreement.