

LRB-RESEARCH AND ANALYSIS SECTION

JUDICIARY AND LEGISLATION COMMITTEE    FEBRUARY 2, 2009    ITEM 9, FILE # 081289  
FINANCE & PERSONNEL COMMITTEE    FEBRUARY 4, 2009    ITEM 6, FILE # 081289  
AMENDED ANALYSIS

The resolution in File # 081289 authorizes appropriation of up to \$174,647.95 from the 2009 Common Council Contingent Fund to the Remission of Taxes Fund for settlement of three lawsuits against the City of Milwaukee relating to 2006, 2007 and 2008 tax assessments.

**Background**

1. The following legal actions were brought against the City in the Milwaukee County Circuit Court alleging excessive assessment of properties for the tax years 2006, 2007 and 2008 under the provisions of s. 74.37, Wis. Stats., providing an alternative to the administrative appeal process before the Board of Review under s. 70.46, Wis. Stats., and s. 307-4 of the Code:
  - Metropolitan Associates v. City (Docket No. 07CV14475)
  - Granville Holding v. City (Docket No. 07CV14477)
  - Northland Apartments v. City (Docket No. 07CV14471)
2. The claim process provided in s. 74.37, Wis. Stats., was made applicable to jurisdictions in Milwaukee County in 2001 as a result of a decision of the Wisconsin Supreme Court striking down an exception in the law for jurisdictions in a county with a population of 500,000 or more. That exception had provided for judicial review of City administrative decisions that was limited primarily to two questions: 1) was the City's determination clearly wrong based on the evidence, and 2) was the City's determination wrong as a matter of law. Section 74.37, Wis. Stats., however, provides for "de novo" review, which means that the Court takes evidence and makes its own decision without regard to the City's prior administrative determination.
3. Legislation passed the last Wisconsin legislature, 2007 Wisconsin Act 86, allowing the City, upon enactment of specific ordinances, to implement a hearing and appeal process that would not be subject to *de novo* Court review. The administrative appeal process provided by Act 86 gives taxpayers expanded procedural rights, but the Milwaukee Circuit Court, in a ruling from the bench on January 20, 2009, struck down the provisions denying the tax payer a *de novo* appeal to the circuit court on the grounds that it denied equal protection of the law.
4. It is generally conceded that the process of initiating and trying a *de novo* action for excessive assessment in circuit court places more pressures and incentives on the City to settle claims.

**Discussion**

1. Settlement discussions between the parties resulted in concessions on both sides. The City Attorney reports that the settlements of tax claims amount to approximately 30% of the claimed overpayment of taxes. Including statutory interest, the total of settlements is approximately 40% of the claims made in court for overpayment.

2. The resolution appropriates up to \$174,627.95 from the Common Council Contingent Fund. The request is made due to the higher than anticipated 2009 demand on the Remission of Taxes Fund Special Purpose Account. An earlier appropriation from the Contingent Fund to the Remission of Taxes Fund was made this year in settlement of claims brought by Walgreen's for up to \$850,000 in resolution File # 081161.
3. Approximately 64% of the amount to be expended in settlement of these claims is subject to reimbursement from other taxing jurisdictions for which the City collects taxes.
4. The Comptroller's status report relating to the 2009 Common Council Contingent Fund finds that, as of January 30, 2009, an amount of \$4,150,000 remains available of the original \$5,000,000 appropriation.
5. Questions were raised at the Judiciary and Legislative Committee meeting of February 2, 2009, reflecting concerns that the Remission of Taxes Fund Special Purpose Account budgeted at \$1,000,000 for 2009 was already exhausted. Review of documentation submitted by the Office of the Commissioner of Assessment during budget deliberations by the Finance & Personnel Committee in October of 2008 reported that the definite payments known at that time to be outstanding against the 2009 Remission of Taxes Fund totaling \$1.1 million included:
  - \$770,000 cumulative paybacks due by January 31, 2009
  - \$40,000 in interest
  - \$180,000 in the claims brought by Metropolitan Apartments
  - \$107,500 in the settlement of claims of Golden Marina Causeway

Additionally, the following potential repayments were identified:

- \$216,000 in the matter of Allright Parking (in the Court of Appeals)
- \$200,000 in the matter of US Oil (in the Circuit Court)
- \$200,000 for typical paybacks ordered by the Board of Review

Projections of potential 2010 claims were also made, one of which was the Walgreen's claim, noted above, estimated in October to be \$700,000.

### **Fiscal Impact**

1. The settlement amount of up to \$174,627.95 authorized in resolution file # 081289 will leave approximately \$3,975,000 in the Common Council Contingent Fund.

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