

From: Moschella, Vincent
Sent: Thursday, October 29, 2009 10:53 AM
To: MacDonald, Terry
Subject: FW: DOR Sales Tax Audit

From: Moschella, Vincent
Sent: Wednesday, October 28, 2009 12:28 PM
To: Egan, John
Cc: Daun, Michael
Subject: RE: DOR Sales Tax Audit

The reasons for not pursuing an appeal are as stated in my e-mail of June 10, 2009, as copied below. The better path would be to seek legislative changes so as not to incur these charges in the future. You may forward this as necessary. Also, please advise if my appearance will be necessary on November 3. Thank you.

Please note that the information contained in or attached to this message is intended only for the personal and confidential use of the recipient(s) designated by me. It may contain privileged and/or confidential material and should not be distributed to any other party without my permission. This message is a public record that may be subject to disclosure, unless privileged by law.

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From: Egan, John
Sent: Wednesday, October 28, 2009 11:52 AM
To: Moschella, Vincent
Cc: Daun, Michael
Subject: RE: DOR Sales Tax Audit

Today, the F & P Committee held the file (090711) to fund the payment to the State for the DOR sales tax audit. It looks like the file could be scheduled at a special meeting on Nov. 3rd before the Council meeting. The Committee would like the City Attorney's Office to explain why the City does not appeal the audit findings.

Thanks

John Egan
Director of Accounts
Special Deputy Comptroller
414-286-2303
jegan@milwaukee.gov

From: Moschella, Vincent
Sent: Wednesday, June 10, 2009 2:52 PM
To: Egan, John
Subject: DOR Sales Tax Audit

John:

By letter of June 4 the Comptroller asked for our assistance in reviewing the DOR's proposed Sales Tax Audit dated June 2, 2009. In a telephone conversation yesterday, you raised two specific issues.

First, you asked if the Port's crane charges are subject to the sales tax. We note that the Port's own crane tariff (see first page of the attachment) includes the following statement: "All items under this tariff item are subject to the Wisconsin State Sales Tax." In addition, Wisconsin Statute 77.52(2)(a)9., applies the sales tax to all docking charges. It is my opinion that the admission in the tariff that the crane charge is a docking charge subject to the tax is enough to doom any challenge to this imposition of the sales tax under this statute.

Second, you asked if the special charge for weed cutting imposed under MCO 80-17 is subject to the sales tax. Paragraph III K. of Wisconsin Department of Revenue Publication 210, Sales and Use Treatment of Landscaping, (see second page of the attachment), specifically enumerates that the following is subject to the sales tax: "Weed cutting performed by a governmental unit under a weed control ordinance that is billed to the property owner." The Department's interpretation will be given "due weight" by a Court in any challenge that might be brought by the City. This means a Court will not overturn the DOR's interpretation unless there is a more reasonable interpretation available. In practice, this means that a "tie" between two reasonable interpretations goes to the DOR and not the challenger. All City Communication Company v. DOR, 2003 WI App 77. Thus, it is my opinion that that there is a very limited chance of bringing a successful challenge to this interpretation by DOR. However, as an alternative means of obtaining relief for the City from this sales tax imposition, this might be a fit subject for a legislative remedy. I would suggest that you contact Paul Vornholt at IRD with a suggestion for an appropriate statutory amendment to make all special charges imposed pursuant to the authority of Wisconsin Statute 66.0627 free from the imposition of the Wisconsin sales tax.

Please let me know if you have any additional questions or concerns. Thank you.

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