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MEMO

Approved by City
Council & WPCA

Date: August 3, 2020

TO: Mayor and City Council
Board of Finance
FROM: Victor M. Muschell, Corporation Counsel
Date: July 22, 2020
Re: Refund of tax paid by KidsPlay

On July 16, 2019 KidsPlay Children's Museum purchased the Salvation Army Building next door to its current location. KidsPlay is a nonprofit 501(c) (3) organization and is exempt from paying real estate or personal property taxes. Salvation Army is also exempt but in this case, because it was not using the building for its exempt purpose on the Assessment date, October 1, 2018, it was treated as taxable. Torrington taxes are paid in two installments; the first on the following July 1st and the second, on the following January 1st. Taxes owed on the Salvation Army property for the 10/1/18 Assessment year were \$20,854.08; payable one-half or \$10,427.04 on July 1st, 2019, and the other half on January 1st, 2020.

When the closing took place on July 16th, 2019 the July taxes of \$10,427.04 were due. Those taxes were adjusted in accordance with the Litchfield County Bar Association practice of using the fiscal year, July to June, for the calculation. That is, the Salvation Army gave Kid's Play a credit of \$914.15 against the purchase price for its 16 days of ownership in July ($\$20,854.08 \div 365 = \$57.1345/\text{day} \times 16 \text{ days} = \914.15) and Kids Play paid the total tax due of \$10,427.04 in order to obtain marketable title. So, under these unique circumstances we have the anomaly of Kids Play, a tax exempt organization, having to pay real estate taxes.

Torrington has an ordinance based on a state law that allows a tax exempt organization to recoup taxes paid under these circumstances. That ordinance follows:

§ 187-2. - Effective date of exemption.

The tax exemption authorized by any of Subsections (7) to (16), inclusive, of Section 12-81 of the Connecticut General Statutes shall be effective as of the date of acquisition of the property to which the exemption applies.(emphasis supplied)

§ 187-3. - Reimbursement of tax paid.

The City of Torrington will reimburse the tax-exempt organization for any tax paid by it for a period subsequent to the date of acquisition and for any tax paid by the prior owner for a period subsequent to the date of acquisition for which such organization reimbursed such owner on the transfer of title to such property. (Emphasis supplied)

§ 187-4. - Procedure for reimbursement.

Application for said reimbursement shall be submitted in writing to the Tax Collector of said City in a form approved by him. No institution contemplated by this article shall be reimbursed for any tax paid until such reimbursement has been approved by the Board of Councilmen and the Board of Finance.

§ 187-5. - Statutory authority.

This article is passed pursuant to the authority granted by Section 12-81b of the Connecticut General Statutes.

A reasonable reading of the ordinance (and the statute upon which it is based) leads to the conclusion that the “*period subsequent to the date of acquisition*” in this case is the period July 17 to December 31. That reading is based on the assumption that taxes paid in July are paid in advance and represent the period from July 1 to the following December 31, and the taxes paid in January represent the period from January 1 to the following June 30. All real estate transactions in Litchfield County adjust taxes based on that assumption; that is, based on the fiscal year. That being the case it follows that KidsPlay is entitled to a refund of the tax it paid in excess of the \$914.15 or \$9512.89; the amount due for the period subsequent to the date of its acquisition, i.e. July 16th, 2019 to December 31st 2019.

There is legal authority which provides an alternative means of determining the amount due under the City’s ordinance. That alternative bases the refund on the Assessment date, i.e. October 1, 2018, rather than the payment date of July 1, 2019. It’s based on the proposition that the annual tax does not cover the period of July to June 30, but, instead cover the period of the previous October 1 to September 30 and, for that tax year, the *period subsequent to the date of acquisition* is July 17 to September 30; that the July and January dates are merely tax due dates. In that scenario Salvation Army would be considered the owner from October 1, 2018 to July 16, 2019 and KidsPlay from July 17, 2019 to September 31, 2019. KidsPlay would then only be entitled to reimbursement for the period of July 16, 2019 to September 31, 2019 or \$4399.36 ($\$57.1345/\text{days} \times 77\text{days} = \4399.36). The problem here is that KidsPlay is out of pocket \$9512.89 but would be reimbursed only \$4399.36; a shortfall of \$5113.53.

Because real estate taxes are, by custom, adjusted using the Fiscal year (July to June) rather than the Assessment year (October to Sept) and because it is reasonable that the parties here relied upon the ordinance seemingly permitting a refund based on the fiscal year it is my opinion that KidsPlay should be entitled to a refund of the amount requested of \$9512.89.

While the ordinance mentions a form to be supplied by the Tax Collector I find that there is no such form. In fact the Tax Collector, having already paid over said tax to the City, should not be responsible for the refund. It is for this reason that KidsPlay has asked that my office review the request and make this recommendation to the City Council and Board of Finance.

I therefore recommend that the City refund the sum of \$9512.89 to KidsPlay in accordance with the above.