

MEMORANDUM

Agenda Item No. 8(D)(1)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 2, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving settlement offer with Internal Revenue Service in the amount of \$283,155.10 with respect to County's voluntary proceeding regarding Seaport Revenue Bonds, Series 1996; and authorizing County Mayor to approve adjusted settlement offer in amount up to \$350,000.00
Resolution No. R-1043-14

The accompanying ordinance was prepared by the Finance Department and placed on the agenda at the request of Prime Sponsor Finance Committee.

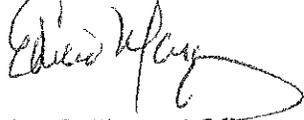


R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum



Date: December 2, 2014
To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners
From: Edward Marquez 
Deputy Mayor
Subject: Resolution Accepting Settlement Offer and Authorizing County Mayor or County Mayor's
Designee to Enter into a Settlement Agreement with the Internal Revenue Service
Regarding Seaport Revenue Bonds, Series 1996

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the accompanying resolution accepting an Internal Revenue Service (IRS) settlement offer of \$283,155.10, and authorizing the County Mayor or County Mayor's designee to approve any increase in such offer up to \$350,000.00 and to accept and enter into a settlement agreement in connection with the IRS's review (Review) of the federal income tax treatment of interest on the Seaport Revenue Bonds, Series 1996 (Series 1996 Bonds), which was initiated by the County.

Scope

The payment to the IRS will have a countywide impact.

Fiscal Impact/Funding Source

The acceptance and payment of the settlement offer by the IRS in the amount of \$283,155.10, and any adjustment to the offer that will increase the settlement up to \$350,000.00, will have a fiscal impact on PortMiami. Any settlement will be paid with Seaport Revenues from the interest savings resulting from the refunding of the Seaport Revenue Refunding Bonds, Series 1995 and Series 1996 (Refunded Bonds).

Track Record/Monitoring

The settlement agreement will be managed by Frank P. Hinton, Director, Division of Bond Administration, Finance Department.

Background

In August 2012, during the County's refunding of the Refunded Bonds, Squire Sanders, LLP (Squire), acting as bond counsel, discovered in its tax review and diligence that a 1998 contract between the County and Carnival (Terminal Agreement) may have affected the tax status of the Series 1996 Bonds. When circumstances change regarding outstanding bonds, such as in this case, the IRS has a voluntary procedure (VCAP) that governmental entities could use to obtain a final determination from the IRS. The County elected to pursue this procedure with respect to the Series 1996 Bonds. On December 4, 2012, the Board approved Resolution R-1005-12, which appointed Squire to be the County's special tax counsel to negotiate and deal with the IRS on the County's VCAP application. At the time, the County's liability was estimated to range between \$200,000.00 and \$1,000,000.00.

Squire received an initial settlement offer from the IRS of over \$850,000.00. After prolonged negotiations, Squire recommends that the County accept the IRS's latest settlement offer of \$283,155.10, which is approximately a third of the initial offer. Since it is within the IRS's discretion to adjust its offer prior to the execution of a final settlement agreement based on the timing of the settlement, this resolution authorizes the County Mayor or the County Mayor's designee to accept an offer in excess of \$283,155.10, but not greater than \$350,000.00.

Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners
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In order to prevent similar types of tax events from occurring, the Administration and County Attorney's Office are working on establishing a process for reviewing all leases and any amendment to a lease or operating agreement with a private concern before they are presented to the Board for approval. The process will determine whether tax-exempt bond proceeds were used to finance the facility(s) leased or operated by the private concern. If tax-exempt bond proceeds were used to finance the facility(s), the lease or operating agreement will be modified to avoid adverse federal tax consequences.

Memorandum



Date: October 31, 2012
To: Edward Marquez
Deputy Mayor
From: Carlos A. Gimenez
Mayor
Subject: Appointment of Squire Sanders (US) LLP As Special Tax Counsel

In accordance with the opinion issued by Joseph Centorino, Executive Director, Miami-Dade Commission on Ethics and Public Trust dated October 24, 2012 ("Ethics Opinion"), I hereby delegate to you all delegable authority relating to the appointment of Squire Sanders (US) LLP as special tax counsel to the County in an Internal Revenue Service (IRS) review initiated by the County with respect to the federal income tax treatment of interest on the Seaport Revenue Bonds, Series 1996 (Series 1996 Bonds) including, but not limited to, the authority to recommend to the Board of County Commissioners this appointment.

If you believe that this appointment is in the best interest of Miami-Dade County, then I hereby delegate to you the authority to seek sponsorship by a County Commissioner in accordance with the Commission's Rules of Procedure. I further delegate to you all delegable authority regarding this matter. You should exercise this authority and utilize your own judgment and should take all actions which are in the best interest of Miami-Dade County and consistent with the County Code, regulations, rules and the solicitation documents. Consistent with the Ethics Opinion, I will not be participating in any decisions made regarding this appointment. In the event an issue arises in the exercise of delegated authority which requires action by the County Mayor and that action is not delegable under Florida law, the Miami-Dade County Home Rule Charter or the County Code, please seek an opinion from the Ethics Commission regarding the appropriate course of action as recommended in the Ethics Opinion.

c: Robert A. Cuevas, Jr., County Attorney
Joe Centorino, Executive Director, Commission on Ethics and Public Trust
Christopher Agrippa, Clerk of the Board



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 2, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(D)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance; and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(D)(1)
12-4-14

RESOLUTION NO. R-1043-14

RESOLUTION APPROVING SETTLEMENT OFFER WITH INTERNAL REVENUE SERVICE IN THE AMOUNT OF \$283,155.10 WITH RESPECT TO COUNTY'S VOLUNTARY PROCEEDING REGARDING SEAPORT REVENUE BONDS, SERIES 1996; AND AUTHORIZING COUNTY MAYOR OR DESIGNEE TO APPROVE ADJUSTED SETTLEMENT OFFER IN AMOUNT UP TO \$350,000.00, TO EXECUTE SETTLEMENT AGREEMENT AND EXERCISE PROVISIONS CONTAINED THEREIN TO EFFECTUATE SETTLEMENT

WHEREAS, this Board adopted Resolution No. R-1005-12 on December 4, 2012 ("Resolution") which authorized the engagement of Squire Sanders (US) LLP ("Squire") to represent the County in a voluntary proceeding with the Internal Revenue Service ("IRS") regarding the status of the Seaport Revenue Bonds, Series 1996 ("Series 1996 Bonds") in light of a recent discovery that a contract with a port user entered into in 1998 may impact the tax exempt status of the Series 1996 Bonds; and

WHEREAS, based on a formula that had been used in similar cases, it was estimated that the County's liability may range from less than \$200,000.00 to \$1,000,000.00 or more in back interest and up to ten percent in penalties; and

WHEREAS, the Resolution also authorized the payment of any settlement amount and Squire's fees from Seaport revenues derived from a Seaport bond refunding that was expected to result in over \$3,000,000.00 in present value savings; and

WHEREAS, after a long process of negotiations, Squire was successful in reducing the IRS's initial offer by one-third to \$283,155.10; and

WHEREAS, this Board wishes to approve the settlement of \$283,155.10 and to authorize the County Mayor or designee to approve a higher settlement amount up to

\$350,000.00 in the event the IRS increases its offer, which it has the discretion to do prior to entering into a settlement agreement as more fully described in the accompanying Mayor's memorandum ("Mayor's Memorandum"), a copy of which is incorporated in this resolution by reference; and

WHEREAS, this Board wishes to authorize the County Mayor or designee to execute and deliver on behalf of the County, any settlement agreement required by the IRS after consultation with the County Attorney,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The offer from the IRS in the amount of \$283,155.10 to settle the voluntary proceeding by the County with the IRS regarding the Seaport's Series 1996 Bonds is approved. The County Mayor or designee is authorized to approve an adjusted settlement offer up to \$350,000.00 in the event the IRS adjusts its settlement offer prior to the execution of a settlement agreement.

Section 2. The County Mayor or designee is authorized to execute a settlement agreement with the IRS pursuant to the terms of this resolution and the Mayor's Memorandum and after consultation with the County Attorney's office and to exercise any and all provisions contained in such agreement.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

	Rebeca Sosa, Chairwoman		aye
Bruno A. Barreiro	aye	Esteban L. Bovo, Jr.	aye
Daniella Levine Cava	aye	Jose "Pepe" Diaz	aye
Audrey M. Edmonson	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Jean Monestime	aye
Dennis C. Moss	absent	Sen. Javier D. Souto	absent
Xavier L. Suarez	aye	Juan C. Zapata	aye

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of December, 2014. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk



Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to read "GTH", enclosed within a hand-drawn circular scribble.

Gerald T. Heffernan