

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 6a

Title:	Presentation of an agreement between the City of St. Charles and the Village of South Elgin related to Sales Tax Distribution.
Presenter:	Mark Koenen

Meeting: Government Operations Committee

Date: August 20, 2018

Proposed Cost: \$568,144.12

Budgeted Amount: Planned for future year's budgets

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

Definition of Problem- the City of St Charles received sales taxes from a retail establishment located in the Village of South Elgin.

Background- The State manages sales tax collections and distributes the local allocation to the municipality the retail establishment is physically located. The subject retail establishment was originally located in St. Charles and relocated to South Elgin, but did not inform the IL- Department of Revenue (IDOR) of their changed address. Because of this oversight, IDOR reimbursed the City of St. Charles \$634,033.41 corresponding to the period between October 2011 and February 2018. This sales tax money should have been allocated to the Village of South Elgin.

State Statute indicates when an error is found, the State upon notification will automatically adjust the payments of previous misallocation(s) for a period limited to six months prior to the time of notification. For your information, this adjustment has taken place in the amount of \$65,144.12. The balance, \$568,144.12, is what South Elgin is requesting the City reimburse their Village.

Resolution- this is about doing what is right. In my world, we have borrowed money from South Elgin as a result of the error. South Elgin has prepared the attached agreement defining the terms for reimbursement. This reimbursement would be based on the South Elgin sales tax rate, include no interest with equal payments over five fiscal years. The first payment (\$113,628.83) would be due on June 15, 2019.

The City's long term relationship with South Elgin is valuable; one we need to respect as a neighboring community and our partner on the Tri-Com Board

**Attachments** *(please list):*

Agreement

**Recommendation/Suggested Action** *(briefly explain):*

Presentation of an agreement between the City of St. Charles and the Village of South Elgin related to Sales Tax Distribution. Staff requests the agreement be advanced with a positive recommendation to the next City Council meeting.

**INTERGOVERNMENTAL AGREEMENT  
BY AND BETWEEN  
THE VILLAGE OF SOUTH ELGIN  
AND  
THE CITY OF ST. CHARLES  
CONCERNING RETAIL SALES TAX REVENUES**

This Intergovernmental Agreement (“the Agreement”) is hereby made and entered into as of the date of execution by and between the Village of South Elgin (hereinafter “Village”) and the City of St. Charles (hereinafter “City”) concerning retail sales tax revenues.

**WHEREAS**, the Village and the City are each a “public agency” as defined in Section 2 of the Intergovernmental Cooperation Act (5 ILCS 220/2); and

**WHEREAS**, the State of Illinois bears the responsibility to collect retail sales taxes and to pay over to the local municipality the share of those revenues due to the municipality; and

**WHEREAS**, a large retailer changed locations moving from the City to the Village; and

**WHEREAS**, the State of Illinois failed to recognize the change of address and, for a period of several years, mistakenly delivered to the City those retail sales tax revenues generated by the retailer that were correctly due to the Village; and

**WHEREAS**, the City and Village desire to correct the mistake made by the State of Illinois concerning the misdirected retail sales taxes; and

**WHEREAS**, the City and the Village are empowered under the Illinois Constitution (Ill. Const., Art. VII, Sec. 10) and Section 3 of the Intergovernmental Cooperation Act (5 ILCS 220/3) to contract with each other in any manner not prohibited by law.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

**Article I – Purpose**

The purpose of the Agreement between is to remedy the mistake made by the State of Illinois concerning retail taxes paid in error to the City instead of the Village.

**Article II – Authority**

The authority for this Agreement is Section 3 of the Intergovernmental Cooperation Act (5 ILCS 220/3), and Article VII of the Illinois Constitution (Ill. Const., Art. VII, Sec. 10).

**Article III – Payments to Be Made.**

A. Gross Amount. The parties agree that the State of Illinois mistakenly paid \$568,144.12 of retail sales taxes to the City that were properly due to be paid to the Village.

B. Payment Schedule. In recognition of the impact of the mistake made by the State of Illinois upon the budgets of both the City and the Village, the parties hereto agree that the City

will pay over the misdirected taxes the Village in 5 installments over the next 5 fiscal years, beginning with the fiscal year commencing May 1, 2019. The parties agree that no interest or other penalty or fee shall be applied to the Gross Amount. Accordingly, the payments shall be made by the City to the Village as follows:

On or before June 15, 2019: \$113,628.83

On or before June 15, 2020: \$113,628.83

On or before June 15, 2021: \$113,628.83

On or before June 15, 2022: \$113,628.83

On or before June 15, 2023: \$113,628.80

#### **Article IV – Term of the Agreement and Modifications**

The Agreement becomes effective as of the Effective Date and shall remain in effect until the payments are accomplished.

#### **Article V – No Liability to Other Parties**

Except for the payments set forth above, each party shall be responsible for its own costs incurred in connection with the Agreement. Each party shall be responsible for resolving and reconciling its own errors, but shall not be liable to any other parties for damages of any kind as a result of errors. Each party shall be liable for the acts and omissions of its own employees and agents. The Agreement does not confer any rights or benefits on any third party.

#### **Article VI – Issue Resolution**

Subject to that understanding, the parties agree to work cooperatively to resolve any matters that arise during the intended term of this Agreement. If an issue cannot be resolved informally by mutual agreement of staff personnel, then the parties agree to undertake a non-binding mediation before taking any formal action.

#### **Article VII – Contacts**

The points of contacts for this Agreement are:

CITY:           City Administrator  
                  City of St. Charles  
                  2 E. Main Street  
                  St. Charles, Illinois 60174  
                  Phone: 630.377.4422

VILLAGE:      Village Administrator  
                  Village of South Elgin

10 N. Water Street  
South Elgin, IL 60177  
Phone: 847.742.5780

**Article VIII – Acceptance of Terms and Commitment**

The signing of this document by authorized officials forms a binding commitment between the City and the Village. The parties are obligated to perform in accordance with the terms and conditions of this document, any properly executed modification, addition, or amendment thereto, any attachment, appendix, addendum, or supplemental thereto, and any documents and requirements incorporated by reference.

By their signing, the signatories represent and certify that they possess the authority to bind their respective organizations to the terms of this document, and hereby do so.

IN WITNESS WHEREOF, the City of St. Charles and the Village of South Elgin by the following officials sign their names to enter into this agreement.

CITY OF ST. CHARLES

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

VILLAGE OF SOUTH ELGIN

By: \_\_\_\_\_  
Village President

Date: \_\_\_\_\_