STAFF REPORT

Council Meeting Date: August 22, 2023

Subject: General Electric Company Tax Refund Request

Staff Resource(s): Brad Branham, City Attorney; Tony McDowell, Finance Director

Actions Requested: Adoption of a Resolution denying General Electric Company's requested tangible personal property tax refund.

Background:

- General Electric Company ("GE") owns taxable tangible personal property located at 401 Sweeten Creek Industrial Park.
- In December of 2019, GE and affiliate entities, GE Capital and GE Industrial, each paid taxes on the tangible personal property which each filed for taxation purposes with Buncombe County.
- In December of 2020, all three entities once again paid taxes on the tangible personal property each had identified to Buncombe County as taxable.
- In July of 2023, a separate entity, GE Healthcare Finance Services, LLC, made a request to the City of Asheville and Buncombe County for a tax refund on the personal property taxes paid by GE Capital and GE Industrial for the tax years 2019 and 2020.
- The requester argues that the collected taxes should have only been paid once instead of three separate times by the three entities described above.
- Pursuant to NCGS 105-381, the City can only grant a tax refund due to clerical error, an illegal tax, or a tax levied for an illegal purpose.
- An illegal tax is one imposed without authority or taxing a property with a valid exemption.
- A clerical error must be apparent on the face of the record and capable of being corrected by reference to the record only.
- None of the statutory allowances for granting a refund apply to the present request, therefore, it is the recommendation of the City Attorney's Office, in consultation with the County Attorney's Office and the County Tax Collector, that the City Council must deny the request.

Council Goal(s):

- A Financially Resilient City

Pro(s):

- Potentially resolves a pending dispute against Buncombe County and the City of Asheville for improperly collected taxes.

Con(s):

- Granting the requested refund is likely beyond the statutory authority of the City Council.

Fiscal Impact:

- The 2 years of requested refund amount to $227,007 in taxes collected by the City

Suggested Motions:

- Motion to adopt the Resolution denying GE's tax refund request, because the City is permitted to assess a tax on tangible personal property located within the City, any potential tax listing errors by GE or its affiliates do not equate to the collection of an illegal tax pursuant to NC General Statute 105-381, and the City has no statutory basis for issuing a refund.

Attachment(s)

- Resolution

RESOLUTION NO.23- _____

RESOLUTION DENYING GENERAL ELECTRIC HEALTHCARE FINANCE SERVICES LLC'S TAX REFUND REQUEST DATED JULY 19, 2023.

WHEREAS, pursuant to N.C.G.S.105-381, a taxpayer must present a valid defense in order to be granted a refund on taxes paid to City; and

WHEREAS, pursuant to N.C.G.S. 105-381(a) those valid defenses are (1) a tax imposed through a clerical error, (2) an illegal tax, or (3) a tax levied for an illegal purpose; and

WHEREAS, on July 19, 2023, General Electric Healthcare Finance Services, LLC (hereinafter "GE HFS"), through its attorney, requested that the City of Asheville refund to GE HFS $227,007 for tangible personal property tax paid in 2019 and 2020 by GE Capital U.S. Holdings, Inc. (hereinafter "GE Capital") and GE Industrial Financing Solutions, LLC (hereinafter "GE Industrial"); and

WHEREAS, GEHFS alleges that it was subject to an illegal tax when the City taxed both GE Capital and GE Industrial and General Electric Company for the same tangible personal property in 2019 and 2020, and

WHEREAs, pursuant to N.C.G.S 105-381(b) the City Council is required to determine whether the taxpayer has a valid defense to the taxes imposed by the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

1. The tax refund request dated July 19, 2023 by GE HFS for $227,007 is hereby denied on the grounds that the City did not assess an illegal tax on GE Capital and GE Industrial for tangible personal property during the 2019 and 2020 tax years.

2. The City Attorney is instructed to share a copy of this resolution with legal counsel for GE HFS.

3. That this resolution is effective upon adoption.

Read, approved, and adopted this 22th day of August, 2023.

_____ _____

City Clerk Mayor

Approved as to form:

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City Attorney