



## Legislation Text

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File #: 15-2165, Version: 1

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**Dept/ Agency:** Law

**Action:** ( ) Ratifying (X) Authorizing ( ) Amending

**Purpose:** Pre-Litigation Settlement

**Docket No.:** N/A

**Other Party:** Consolidated Rail Corporation

**Other Party's Attorney:** McCarter & English

**Attorney's Address:** 100 Mulberry Street, Four Gateway Center, Newark, New Jersey 07102

**Settlement Amount:** \$2,410,154.63

**Funding Source:** N/A

**Additional Comments:**

Conrail is paying the City of Newark back Payroll Taxes

**Invitation:** Business Administrator, Director of Finance, Corporation Counsel

**WHEREAS**, the Department of Finance, Office of Tax Abatement and Special Taxes, conducted an audit of certain businesses in the City of Newark relative to compliance with the Newark Payroll Tax requirements as set forth in the City of Newark's Ordinance, Sections 10:21-1, et seq.; and

**WHEREAS**, one of the businesses audited was Consolidated Rail Corporation ("Conrail"), located locally at 91 Bay Avenue, Newark, New Jersey (a copy of the City's Audit Notice to Conrail, dated March 15, 2015, is attached); and

**WHEREAS**, in response to the City's Audit Notice, Conrail offered to pay the City a total of \$1,145,226.00 in back Payroll Taxes and interest for the period of 2008 through the first quarter of 2015 (a copy of the June 25, 2015, letter from Conrail's attorney is attached); and

**WHEREAS**, representatives of the City and Conrail engaged in discussions as to the amount owed by Conrail to the City for back Payroll Taxes, and the parties agreed, subject to approval by the Newark Municipal Council, that Conrail will pay the City a total of \$2,410,154.63 in back Payroll Taxes, including interest and penalties for all periods prior to and including September 30, 2015; and

**WHEREAS**, for the reasons set forth below, the settlement agreement figure reflects a compromised penalty rate; and

**WHEREAS**, the compromised penalty rate was deemed by the Business Administrator, the Assistant Business Administrator, the Finance Director, the Manager of Tax Abatement and Special Taxes and the Corporation Counsel, to be a practical and effective way to deal with the uncertainties and costs that would have been associated with litigation of the matter; and

**WHEREAS**, given all of the facts and circumstances of the matter, the Business Administrator, the Assistant Business Administrator, the Finance Director, the Manager of Tax Abatement and

Special Taxes and the Corporation Counsel recommend that the Municipal Council approve settlement of the matter by the City's acceptance of a total payment from Conrail in amount of \$2,410,154.63, and that a Settlement Agreement and Release in the form attached be executed.

**NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

1. The Business Administrator and Corporation Counsel are authorized on behalf of the City of Newark to execute and enter into a Settlement Agreement and Release with Consolidated Rail Corporation ("Conrail") to resolve the dispute of unpaid Payroll Taxes and execute any other documents, sufficient in form and content to the Corporation Counsel and to take appropriate actions as necessary to effectuate the terms of this resolution and settlement of this matter.

2. In exchange for the execution of the Settlement Agreement and Release, acceptable in form to the Corporation Counsel and after passage of this Resolution and upon receipt by the Corporation Counsel and the Director of Finance of any and all other documents deemed necessary, the Director of Finance and/or her designee the Manager of the Office of Tax Abatement and Special Taxes of the City of Newark is authorized to accept payment from Consolidated Rail Corporation, having a principal place of business at 1717 Arch Street, Philadelphia, Pennsylvania, 19103, and having also a local place of business at 91 Bay Avenue, Newark, New Jersey 07105, in the total amount of \$2,410,154.63 as payment in full for all back Payroll Taxes, including all interest and penalties, for all periods prior to and including September 30, 2015.

3. Conrail shall issue a check in the amount of \$2,410,154.63 made payable to the City of Newark. The Finance Director and/or her designee, the Manager of the Office of Tax Abatement and Special Taxes, shall accept the check, make the appropriate adjustments to Conrail's account and cause the check to be deposited into the Payroll Tax Fund Account 011 050 0505 5121.

4. A fully executed copy of the Settlement Agreement and Release shall be filed in the office of the City Clerk by the Corporation Counsel.

**STATEMENT**

This resolution authorizes the Business Administrator and Corporation Counsel to enter into a Settlement Agreement and Release, on the behalf of the City of Newark, with Consolidated Rail Corporation in the total amount of \$2,410,154.63 as payment in full for all back Payroll Taxes, including all interest and penalties, for all periods prior to and including September 30, 2015.