

MEMORANDUM

Date: October 19, 2023

To: Lorenzo Tyner
Assistant General Manager
Finance and Administration

From: Jacob Bholat

Cc: Bradley R. Hogin, Esq.
Mardiros Dakessian, Esq.

Summary of claims. Our sales tax refund claims are based on the argument that OCSD has overpaid sales or use tax on chemicals used to treat wastewater. The California Department of Tax and Fee Administration (“CDTFA”) considers sales of chemicals used to treat wastewater as taxable unless those sales fit within the resale exemption. But under California law, gross receipts “derived from the sales, furnishing, or services of” water are exempt from sales and use tax under a stand-alone exemption. Rev. & Tax. Code § 6353. Although this is a broad exemption—much broader than most exemption statutes—the Department does not accept or properly apply this exemption. It has instead required that OCSD pay use tax on its chemical purchases for years.

Efforts to achieve refunds. On September 23, 2015, OCSD engaged Equity Recovery Services (“ERS”) and Marty Dakessian, then an equity partner with Reed Smith LLP, to work together to file and prosecute refund claims based on the theory discussed above. Both firms were retained on a contingent fee basis. Dakessian left Reed Smith in 2016 to form his own firm, Dakessian Law, Ltd., which OCSD retained in March of 2016 to continue prosecuting the refund claims in concert with ERS. The 15 claims in question cover the following periods: January 2013 to December 2018.

ERS and Dakessian have been working on trying and resolving these claims for the past six years, pursuing the various administrative remedies available under the law and navigating a total overhaul of California’s administrative tax dispute resolution process in 2017. This process finally led to the entry of the claims into the CDTFA’s formal settlement program in May 2020.

Recommendation. After protracted negotiations with the CDTFA Settlement Section spanning over 36 months, ERS and Dakessian are recommending acceptance of the CDTFA’s counteroffer in the amount of \$12,541.24, as set forth below. This represents a settlement of 14.5% of the remaining claimed amounts totaling \$86,234. Originally, the amounts remaining after the first round of settlement were \$1,817,092. The vast majority of these claims were denied due to various documentation and audit issues. These included the refusal of vendors to timely file claims, provide us with powers of attorney, or otherwise refused to prosecute the refund claims.

Recap of settlement dollars for OCSD.

Vendor	Remaining Claimed Amounts	CDTFA Final Counteroffer
Olin Chlor Alkali Products	\$ 86,234.00	\$ 12,541.24

Conclusion. With Board approval, we can bring these claims to a close.