

29488

SETTLEMENT AGREEMENT AND RELEASE OF LIABILITY

“between City of Long Beach and Office Depot, Inc. and subsidiaries regarding liability for payment of incentive for sales tax revenue received for years 1997 through June 30, 2005.”

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SETTLEMENT AGREEMENT AND RELEASE OF LIABILITY

This Settlement Agreement and Release of Liability (“Agreement”) is entered into by and between CITY OF LONG BEACH (“City”) and OFFICE DEPOT, INC. and its subsidiaries (“Company”) as of December 22, 2005.

RECITALS

- A. In late 1997, Company opened a facility in City of Long Beach, consisting of showrooms, administrative offices, and a warehouse (“Facility”).
- B. In 2000, City received its first allocation of local sales tax revenues from sales at the Facility. City should have received allocation beginning in 1998.
- C. In 1998, State Board of Equalization (“SBE”) initiated an audit of Company’s sales tax returns and sales data to determine an equitable sales tax allocation among jurisdictions that have Company distribution facilities.
- D. SBE allocated sales tax revenues generated from retail sales at the Facility and telephone, internet, catalog and other sales consummated through the Facility’s distribution center to City, with the admonition that some or all of those revenues could be reallocated to other cities or to countywide pools pending investigation into Company’s sales practices.
- E. SBE, while conducting its investigation of sales practices at the Facility, developed concerns relating to the proper allocation of sales tax revenue generated from transactions SBE refers to as “contract sales.” These are sales made to customers who have an established contractual business relationship with Company. These relationships are developed by Account Representatives located throughout the state. SBE, City and Company engaged in several years of investigation relating to the proper allocation of “contract sales.”
- F. On July 8, 2005, SBE Refund Section Supervisor Robert J. Wils issued a decision (Exhibit A) on both the allocation and “contract sales” issues. In that decision, Mr. Wils concluded that the contingent sales tax revenue allocations from 1999 through the present were properly allocated to City, with the exception of \$1,033,750, for the period January 1, 1998 through March 3, 2000, which would be reallocated to City of Long Beach from City of Signal Hill. Mr. Wils also concluded – based on the opinion of SBE staff counsel – that sales to customers with an existing contractual business relationship with Company were negotiated outside City of Long Beach, and that accordingly, tax revenues from those sales would not be allocated to City. Both City and

Company accepted the SBE's findings and therefore, City did not file an appeal.

AGREEMENT

In consideration of the promises set herein, City and Company agree to the following:

1. City and Company agree that the allocations of sales tax revenue generated at the Facility from 1998 through June 30, 2005 are now final (Exhibit B). Further, they agree with the findings of the SBE (Exhibit A).
2. City and Company agree that they will not seek further review of SBE's decision with respect to the sales tax revenue allocations identified in paragraph 1, above.
3. City and Company agree that they will also not seek further review of SBE's conclusion regarding allocation of sales tax revenues generated from "contract sales" for periods prior to January 1, 2005. City and Company reserve the right to challenge in the future the allocation of sales tax revenues generated on such "contract sales."
4. The parties agree that amount due Company from City for 1998 through June 30, 2005, before adjusting for costs, is \$1,724,781.05.
5. City agrees to pay Company \$1,550,000.00. This amount represents the amount of \$1,724,781.05 less adjustments agreed to by both parties for interest, consulting services and other costs.
6. City agrees to pay Company \$1,550,000.00 in three equal payments immediately after City receives from SBE three equal payments totaling \$1,033,750.00 for the reallocation from the City of Signal Hill. (The payments from the SBE are expected to occur on January 18, February 15 and March 30 of 2006.)

JURISDICTION

7. This Agreement shall be construed in accordance with the laws of the State of California

AUTHORITY

8. City and Company represent and warrant that their respective signatories below have full authority to execute this Agreement on behalf of the party so indicated.

ENTIRE AGREEMENT

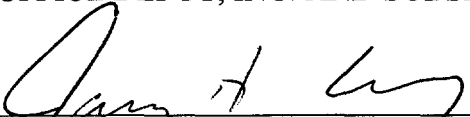
9. This Agreement incorporates the July 8, 2005 decision issued by the SBE (Exhibit A) and City's schedule (Exhibit B) of amount due Company before offsets, both of which are attached hereto. This Agreement and these incorporated documents contain the entire understanding between and among City and Company with respect to the matters set forth herein. These are no representations, warranties, or agreements, oral or written, between and among City and Company related to the subject matter of this Agreement that are not fully expressed herein. This Agreement may not be modified or amended except by the written agreement of City and Company. This Agreement is binding upon all successors and assigns.

COUNTERPARTS

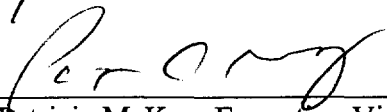
10. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument.

THE UNDERSIGNED HEREBY AFFIRM AND ACKNOWLEDGE that they fully understand and appreciate the foregoing words and their significance; that they are entirely satisfied with the terms contained within this document; and that they have affixed their signature hereto voluntarily and of their own free will and accord.

OFFICE DEPOT, INC. AND SUBSIDIARIES:


By Jim Grady, Vice President - Tax

Dated: 1/19/2006


Patricia McKay, Executive Vice
President, CFO

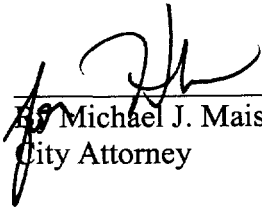
Dated: 1/25/06

CITY OF LONG BEACH:


By Gerald R. Miller, City Manager

Dated: _____

APPROVED AS TO FORM:



By Michael J. Mais, Assistant
City Attorney

Dated: 1/30/02

Exhibits:

- A. SBE Decision
- B. City's Schedule of Amount Due before Offsets

BOE - AD&RS (MIC 39) TEL:19163228834

Jul 11 '05 7:02 No.001 P.01



STATE OF CALIFORNIA

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Executive Director

July 8, 2005

Mr. Robert E. Cendejas
Attorney at Law
1725 North Juliet Court
Brea, CA 92821

RE: SRZ OHC 16-655747
Eastman, Inc.

Dear Mr. Cendejas:

As you requested the other day, I am writing this letter to memorialize our position regarding the local tax allocation of the above taxpayer to Signal Hill and Long Beach.

As you know from my previous letter, based on Mr. John Waid's legal opinion, we have decided to accept the local allocation as reported by this taxpayer, except for adjustments to the above two cities. It was decided several years ago that because of the taxpayer's location on the Signal Hill/Long Beach border, the City of Long Beach was entitled to receive a portion of the local tax generated at that location. In fact, the taxpayer started allocating local tax to Long Beach in the second quarter of 2000. Based on the date of knowledge in the fourth quarter 1998, as ordered by the Board at its November 13, 2002, we will make adjustments for the quarterly periods from the second quarter 1998 to first quarter 2000. These adjustments will result in \$1,033,750 being reallocated from Signal Hill to Long Beach.

Hopefully these adjustments will bring to a close a very long and arduous journey. If do not agree with these proposed adjustments and wish to pursue this matter further, you may request a conference with the Local Tax Hearing Auditor. Such a request should be sent to Mr. Robert Buntjer, Supervisor of the Audit Determination and Refund Section within 30 days of the date of this letter.

Sincerely,

Robert J. Wils
Supervising Tax Auditor
Audit Determination and Refund Section

Post-it [®] brand fax transmittal memo 7871		# of pages >	
To: ROBERT CENDEJAS	From: BOB WILS		
City:	City: BOE		
Phone:	Phone: (916) 324-307		
Fax: (928) 396-1292	Fax: (916) 445-2249		

EXHIBIT A

**CITY OF LONG BEACH
CALCULATION OF SALES TAX REBATE OFFICE DEPOT
ACTUAL CASH RECEIVED THROUGH 4TH QTR 2005**

BRH:mydocs/personal/Office Depot - Sales Tax Rebate

3/7/06 9:24 AM

(Agreement effective November 14, 1997)

We will apply "year" to be fiscal year, not calendar year

Exhibit B

First yr = City \$50K; Office Depot \$250K; balance 50/50

Second yr and after = City \$50K; balance 50/50

First Actual Cash Remittance received quarter 7/1/00-9/30/00 for quarter 4/1/00-6/30/00

Cash Received Quarter Ended	For Quarter Ending	Sales Tax Receipts	City's Share, 1st \$50k	City's Share 50/50 Split	Total City's Share	Office Depot's Share
Nov-Dec 97		\$ -				
Jan-Mar 98 (est)	Nov-Dec 97 (est) **	\$ -	\$ -			\$ -
Apr-Jun 98 (est)	Jan-Mar 98 (est) **	141,959.00	50,000.00			91,959.00
Jul-Sep 98 (est)	Apr-Jun 98 (est) **	130,271.00				130,271.00
Total FY 1998		\$ 272,230.00	\$ 50,000.00	\$ -	\$ 50,000.00	\$ 222,230.00
Oct-Dec 98 (est)	Jul-Sep 98 (est) **	\$ 108,762.00	\$ 50,000.00	\$ 29,381.00	\$ 79,381.00	\$ 29,381.00
Jan-Mar 99 (est)	Oct-Dec 98 (est) **	101,530.00		50,765.00	50,765.00	50,765.00
Apr-Jun 99 (est)	Jan-Mar 99 (est) **	108,935.00		54,467.50	54,467.50	54,467.50
Jul-Sep 99 (est)	Apr-Jun 99 (est) **	109,808.00		54,904.00	54,904.00	54,904.00
Total FY 1999		\$ 429,035.00	\$ 50,000.00	\$ 189,517.50	\$ 239,517.50	\$ 189,517.50
Oct-Dec 99 (est)	Jul-Sep 99 (est) **	\$ 110,497.00	\$ 50,000.00	\$ 30,248.50	\$ 80,248.50	\$ 30,248.50
Jan-Mar 00 (est)	Oct-Dec 99 (est) **	95,492.00		47,746.00	47,746.00	47,746.00
Apr-Jun 00 (est)	Jan-Mar 00 (est) **	126,496.00		63,248.00	63,248.00	63,248.00
Jul-Sep 00 (actual)	Apr - June '00	124,264.14		62,132.07	62,132.07	62,132.07
Total FY 2000		\$ 456,749.14	\$ 50,000.00	\$ 203,374.57	\$ 253,374.57	\$ 203,374.57
Oct-Dec 00 (actual)	July - Sept '00	\$ 135,414.86	\$ 50,000.00	\$ 42,707.43	\$ 92,707.43	\$ 42,707.43
Jan-Mar 01 (actual)	Oct - Dec '00	134,111.42		67,055.71	67,055.71	67,055.71
Apr-June 01 (actual)	Jan - Mar '01	136,656.70		68,328.35	68,328.35	68,328.35
July-Sept 01 (actual)	Apr - June '01	124,940.00		62,470.00	62,470.00	62,470.00
Total FY 2001		\$ 531,122.98	\$ 50,000.00	\$ 240,561.49	\$ 290,561.49	\$ 240,561.49
Oct-Dec 01 (actual)	July - Sept '01	\$ 119,459.99	\$ 50,000.00	\$ 34,730.00	\$ 84,730.00	\$ 34,730.00
Jan-Mar 02 (actual)	Oct - Dec '01	\$ 121,576.00		60,788.00	60,788.00	60,788.00
Apr-June 02 (actual)	Jan - Mar '02	\$ 132,719.02		66,359.51	66,359.51	66,359.51
July-Sept 02 (actual)	Apr - June '02	\$ 126,230.96		63,115.48	63,115.48	63,115.48
Total FY 2002		\$ 499,985.97	\$ 50,000.00	\$ 224,992.99	\$ 274,992.99	\$ 224,992.99
Oct-Dec 02 (actual)	July - Sept '02	\$ 125,167.00	\$ 50,000.00	\$ 37,583.50	\$ 87,583.50	\$ 37,583.50
Jan-Mar 03 (actual)	Oct - Dec '02	\$ 116,402.00		58,201.00	58,201.00	58,201.00
Apr-June 03 (actual)	Jan - Mar '03	\$ 129,383.00		64,691.50	64,691.50	64,691.50
July-Sept 03 (actual)	Apr - June '03	\$ 113,367.00		56,683.50	56,683.50	56,683.50
Total FY 2003		\$ 484,319.00	\$ 50,000.00	\$ 217,159.50	\$ 267,159.50	\$ 217,159.50
Oct-Dec 03 (actual)	July - Sept '03	\$ -	\$ 50,000.00	\$ (25,000.00)	\$ 25,000.00	\$ (25,000.00)
Jan-Mar 04 (actual)	Oct - Dec '03	\$ 226,202.00		113,101.00	113,101.00	113,101.00
Apr-June 04 (actual)	Jan - Mar '04	\$ 124,820.00		62,410.00	62,410.00	62,410.00
July-Sept 04 (actual)	Apr - June '04	\$ 122,624.00		61,312.00	61,312.00	61,312.00
Total FY 2004		\$ 473,646.00	\$ 50,000.00	\$ 211,823.00	\$ 261,823.00	\$ 211,823.00
Oct-Dec 04 (actual)	July - Sept '04	\$ 124,930.00	\$ 50,000.00	\$ 37,465.00	\$ 87,465.00	\$ 37,465.00
Jan-Mar 05 (actual)	Oct - Dec '04	\$ 117,832.00		58,916.00	58,916.00	58,916.00
Apr-June 05 (actual)	Jan - Mar '05	\$ 111,846.00		55,923.00	55,923.00	55,923.00
July-Sept 05 (actual)	Apr - June '05	\$ 125,636.00		62,818.00	62,818.00	62,818.00
Total FY 2005		\$ 480,244.00	\$ 50,000.00	\$ 215,122.00	\$ 265,122.00	\$ 215,122.00
Estimated Totals 11/97-9/05		\$3,627,332.09	\$400,000.00	\$1,502,551.05	\$1,902,551.05	\$1,724,781.05
Less Actuals Received to date thru 9/30/05		(2,593,582.09)	(400,000.00)	(1,096,791.05)	(1,496,791.05)	(1,096,791.05)
Estimated amts due City & Off. Dep.		\$1,033,750.00	\$0.00	\$405,760.00	\$405,760.00	\$627,990.00

Total Estimated Office Depot Share Due

\$1,724,781.05

City Costs to win Date of Knowledge Issue w/SBE to get taxes back to 1/98

-\$91,557.73

Less Interest on Prior Years' Sales Tax Revenues not yet Received

-\$140,004.13

Net Amount Due Office Depot thru 9/30/05

\$1,493,219.19

** These monies agreed to by SBE as due Long Beach per DOK decision 11/13/02. Not received as of 8/02/05

City Costs Incurred in Pursuing the Office Depot Issue:

Bob Cendejas Consultant Costs \$ 21,713.00
through November 2003

Barbara Hennessy (estimated costs since 9/99)

15 days 8 hrs/day \$53/hr	6,360	
Overhead at 30% (Includes FICA & Insur)	1,908	
Travel - 5 trips at an estimate of \$500/trip	2,500	
Total Barbara Costs		\$ 10,768.00

Total Costs through 9/30/02 **\$ 32,481.00**

Additional Costs through 9/30/03 for **Cendejas'** time to re-defend revision to Reg 1802, plus keep in touch with Office Depot, Bob Wils at SBE re allocation, etc: 17,254.83

Barbara Hennessy's costs:

2005 Cost	531	
3 meetings in Sacramento @ \$500/trip	1,500	
30 hours, \$53/hr + 30% overhead	2,067	4,098.00

Total Costs through 9/30/03 **\$ 53,833.83**

Mike Killebrew Costs:

10 hours at \$87.37 loaded \$ 873.70

CENDEJAS' FY 04 -05 - COSTS ON OFFICE DEPOT

for December 2003	2,208.33	
for FY 2004	17,443.62	
through 7/31/05	10,229.50	
for August 2005	1,000.00	
for September 2005	218.75	
for October 2005	750.00	
for November 2005 (est)	2,500.00	
for December 2005 (est) through settle conclusion w/payment	2,500.00	
		36,850.20

Total Costs through 12/31/05 **\$ 91,557.73**

CALCULATION OF INTEREST DUE ON OFFICE DEPOT SALES TAXES

T:Revenue/Sales Tax/Office Depot Sales Tax Rebate 8-03-05 v2.xls

02/22/2006 9:25

SALES TAX PERIOD CALENDAR QUARTER	AMOUNT	FISCAL YR	INTEREST RATE	# OF MONTHS SUBJECT TO INTEREST	INTEREST AMOUNT	TOTAL INTEREST
2qtr 1998	141,959	1998	5.9%	6.5	4,536.77	
	50,000	1999	5.7%	12	2,850.00	
	50,000	2000	5.8%	12	2,900.00	
	50,000	2001	5.5%	12	2,750.00	
	50,000	2002	4.4%	12	2,200.00	
	50,000	2003	3.0%	12	1,500.00	
	50,000	2004	3.0%	12	1,500.00	
	50,000	2005	2.7%	12	1,350.00	
	50,000	2006	3.4%	3	425.00	20,011.77
3qtr 1998	130,271	1998	5.9%	3.5	2,241.75	2,241.75
Note: Interest only due for 3 qtr 98 because this is amt due to OD and if rec'd, City would have paid Office Depot						
4qtr 1998	108,762	1999	5.7%	9.5	4,907.89	
	78,381	2000	5.8%	12	4,546.10	
	78,381	2001	5.5%	12	4,310.96	
	78,381	2002	4.4%	12	3,448.76	
	78,381	2003	3.0%	12	2,351.43	
	78,381	2004	3.0%	12	2,351.43	
	78,381	2005	2.7%	12	2,116.29	
	78,381	2006	3.4%	3	666.24	24,699.09
	1qtr 1999	101,530	1999	5.7%	6.5	3,134.74
50,765		2000	5.8%	12	2,944.37	
50,765		2001	5.5%	12	2,792.08	
50,765		2002	4.4%	12	2,233.66	
50,765		2003	3.0%	12	1,522.95	
50,765		2004	3.0%	12	1,522.95	
50,765		2005	2.7%	12	1,370.66	
50,765		2006	3.4%	3	431.50	15,952.90
2qtr 1999		108,935	1999	5.7%	3.5	1,811.04
	54,468	2000	5.8%	12	3,159.14	
	54,468	2001	5.5%	12	2,995.74	
	54,468	2002	4.4%	12	2,396.59	
	54,468	2003	3.0%	12	1,634.04	
	54,468	2004	3.0%	12	1,634.04	
	54,468	2005	2.7%	12	1,470.64	
	54,468	2005	3.4%	3	462.98	15,564.21
	3qtr 1999	109,808	1999	5.7%	0.5	260.79
54,904		2000	5.8%	12	3,184.43	
54,904		2001	5.5%	12	3,019.72	
54,904		2002	4.4%	12	2,415.78	
54,904		2003	3.0%	12	1,647.12	
54,904		2004	3.0%	12	1,647.12	
54,904		2005	2.7%	12	1,482.41	
54,904		2006	3.4%	3	466.68	14,124.05

4qtr 1999	110,497	2000	5.8%	9.5	5,073.65	
	80,249	2001	5.5%	12	4,413.70	
	80,249	2002	4.4%	12	3,530.96	
	80,249	2003	3.0%	12	2,407.47	
	80,249	2004	3.0%	12	2,407.47	
	80,249	2005	2.7%	12	2,166.72	
	80,249	2006	3.4%	3	<u>682.12</u>	20,682.08
1qtr 2000	95,492	2000	5.8%	6.5	3,000.04	
	47,746	2001	5.5%	12	2,626.03	
	47,746	2002	4.4%	12	2,100.82	
	47,746	2003	3.0%	12	1,432.38	
	47,746	2004	3.0%	12	1,432.38	
	47,746	2005	2.7%	12	1,289.14	
	47,746	2006	3.4%	3	<u>405.84</u>	12,286.64
2qtr 2000	126,496	2000	5.8%	3.5	2,139.89	
	63,248	2001	5.5%	12	3,478.64	
	63,248	2002	4.4%	12	2,782.91	
	63,248	2003	3.0%	12	1,897.44	
	63,248	2004	3.0%	12	1,897.44	
	63,248	2005	2.7%	12	1,707.70	
	63,248	2006	3.4%	3	<u>537.61</u>	14,441.63
GRAND TOTAL INTEREST						140,004.13

Note: Interest is calculated as follows:

Entire amount that would have been allocated to the City per Bob Wils' estimate X
number of months remaining in that fiscal year +

City portion of the unallocated amount for every year thereafter until funds received

Interest rate = annualized rate per CAFRs and per Treasury for fye '05.