SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

BOSTON PROPERTIES LIMITED PARTNERSHIP,	*	**Case No. 2012 CVT 011108**
	*	**Judge Erik P. Christian**
PETITIONER,	*	
v.	*	
DISTRICT OF COLUMBIA,	*	
RESPONDENT.	*	

ORDER

This matter is before the Court on consideration of the following: (1) the Government's Motion to Dismiss or, in the Alternative, for Summary Judgment, and (2) Petitioner Boston Properties Limited Partnership's Cross-Motion for Summary Judgment.

I. BACKGROUND

The facts in this matter are largely undisputed. On April 27, 2009, Plaintiff Boston Properties Limited Partnership, a subsidiary of Boston Properties, Inc., filed an amended District Form D-30 SUB, Unincorporated Business Franchise Tax Return, claiming a refund due to an overpayment of Petitioner's 2007 taxable year franchise tax. Complaint ¶ 6, *Boston Props. Ltd. P'ship*, Case No. 2012 CA 003660 B (D.C. Super. Ct. Apr. 26, 2012). On February 9, 2011, the District of Columbia's Office of Tax and Revenue's ("OTR") Audit Division issued a Notice of Tentative Refund Denial as it related to $966,746.76 of Petitioner's requested refund. *Id*. ¶ 10. However, OTR allowed the remainder of Petitioner's refund. *Id*. On March 9, 2011, Petitioner, through its duly authorized representative, PricewaterhouseCoopers LLP ("Pricewaterhouse"), requested

that OTR's Compliance Administration Reconsideration Office ("CARO") reconsider the Audit Division's denial. *Id.* ¶ 11.

On August 3, 2011, CARO responded to Petitioner's reconsideration request, offering to resolve Petitioner's appeal through a revision of the D.C. Apportionment Factor, which would allegedly be fair to both the OTR and Petitioner. *Id.* ¶ 13; *see also id.* Ex. B. Pricewaterhouse accepted CARO's offer on behalf of Petitioner on August 23, 2011. *Id.* ¶ 18; *see also id.* Ex. C. On August 25, 2011, Grace Eng, a Program Analyst for CARO, agreed to a tax refund of $778,459.61 pursuant to the recalculation of Petitioner's tax liability as outlined by the August 3, 2011, letter. *Id.* ¶¶ 19-20; *see also id.* Ex. D. In a follow-up letter dated August 30, 2011, CARO (through Bedell Terry) confirmed the acceptance of the revised calculation and the purported agreement reached between the parties. *Id.* ¶¶ 21-22; *see also id.* Ex. E. Pursuant to the agreement, Mr. Terry agreed to transfer the matter back to the Audit Division in order to initiate a refund in the amount of $778,459.61 plus interest beginning on November 4, 2009, at 6% per annum. *Id.* ¶ 22; *see also id.* Ex. E. However, on December 6, 2011, Mr. Terry notified Pricewaterhouse that CARO was withdrawing the offer due to a "miscalculation of the refund amount." *Id.* ¶¶ 28-29; *see also id.* Ex. F.

On April 26, 2012, Boston Properties initiated the action *Boston Properties Limited Partnership v. District of Columbia*, Case No. 2012 CA 003660 B (D.C. Super. Ct. Apr. 26, 2012) (later certified to the tax division and becoming *Boston Properties Limited Partnership v. District of Columbia*, Case No. 2012 CVT 011108 (D.C. Super. Ct. July 18, 2012)) (the "Contract Case"). In the Contract Case, Petitioner alleges that Respondent District of Columbia breached its contract by failing to uphold the settlement

agreement. On April 27, 2012, Boston Properties also initiated a tax refund action. *See Boston Props. Ltd. P'ship v. District of Columbia*, Case No. 2012 CVT 011102 (D.C. Super. Ct. Apr. 27, 2012) (the "Refund Case"). In the Refund Case, Petitioner seeks a tax refund relating to the alleged overpayment of the franchise tax for Tax Year 2007. In the Refund Case, Boston Properties is seeking a full tax refund of $966,746.76, as opposed to the settlement amount of $778,459.61 sought in the Contract Case.

On August 2, 2012, Respondent filed the instant Motion to Dismiss or, in the Alternative, for Summary Judgment in the Contract Case. Respondent argues that it is not bound by the alleged settlement agreement because Mr. Terry and Ms. Eng lacked actual authority to negotiate a settlement of such magnitude. On August 30, 2012, Petitioner filed its Cross-Motion for Summary Judgment, arguing that Mr. Terry and CARO resolved the taxpayer dispute, and that Mr. Terry had actual authority to negotiate the settlement agreement; Petitioner's Cross-Motion also included its opposition to Respondent's Motion. On September 21, 2012, Respondent filed its opposition to Petitioner's cross-motion, and on September 27, 2012, Respondent filed its reply to Petitioner's opposition. The parties have provided the instant filings in both the Refund Case and the Contract Case; however, due to the nature of the pending motions, the outcome of these motions will only impact the Contract Case.

II. STANDARD OF REVIEW

D.C. Super. Ct. R. Civ. P. 56 (2012)[1] governs motions for summary judgment. Summary judgment is an appropriate remedy if there are no material facts at issue and the moving party is entitled to judgment as a matter of law. *Lamphier v. Washington Hosp.*

[1] D.C. Super. Ct. R. Civ. P. 12-I(k) and 56 are applicable to actions brought before the Tax Division. D.C. Super. Ct. Tax P.R. 3 (2012).

Ctr., 524 A.2d 729, 731 (D.C. 1987). The moving party has the burden to clearly demonstrate the absence of any genuine issue of fact, and all inferences which may be drawn from the facts are resolved against the movant. *Doolin v. Environmental Power, Ltd.*, 360 A.2d 493, 496 (D.C. 1976). Once the moving party has met its burden, the nonmovant must offer specific facts admissible in evidence demonstrating a genuine issue for trial; mere allegations and denials set forth in pleadings are not enough. *Miller v. Greater Southeast Cmty. Hosp.*, 508 A.2d 927, 928 (D.C. 1986). Mere conclusory allegations are not enough to stave off summary judgment. *Linen v. Landford*, 945 A.2d 1173, 1177 (D.C. 2008). Rather, if the moving party supports its motion with deposition responses or other evidence submitted under oath, the opposing party may not rely on general pleadings or a denial; the opposing party must respond by providing material facts under oath which raise genuine issues of fact for trial. *Wines v. Mfrs. & Traders Trust Co.*, 935 A.2d 1078, 1085-86 (D.C. 2007). Summary judgment is appropriate when, taking all reasonable inferences in the light most favorable to the nonmoving party, a reasonable juror could not find for the nonmoving party under the appropriate burden of proof. *Wallace v. Skadden, Arps, Slate, Meagher & Flom, LLP*, 799 A.2d 381 (D.C. 2002).

III. ANALYSIS

"[W]hen the United States enters into contract relations, its rights and duties therein are governed by the law applicable to contracts between private parties." *Lynch v. United States*, 292 U.S. 571, 579 (1933). However, "an agent of the Government may not bind the Government to an agreement when such an act is directly forbidden by U.S.

law or regulations." *Tex. Instruments, Inc. v. United States*, 922 F.2d 810, 815 (Fed. Cir. 1990). Pursuant to statute:

> An officer or employee of the United States Government or of the District of Columbia government may not – (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; [or] (B) involve either government in an contract or obligation for the payment of money before an appropriation is made unless authorized by law.

31 U.S.C. § 1341(a)(1) (2012); *see also* D.C. Code § 1-204.46 ("[N]o amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act."); D.C. Code § 47-355.02. The Anti-Deficiency Act bars federal and District employees from "entering into a contract for future payment of money in advance of, or in excess of, an existing appropriation." *Hercules, Inc., v. United States*, 516 U.S. 417, 427 (1996). Because of this, "all contracts for future payments of money, in advance of or in excess of existing appropriations, are void ab initio." *Williams v. District of Columbia*, 902 A.2d 91, 94 (D.C. 2006). However, the government may not hide behind the Anti-Deficiency Act when a binding agreement has been completed by its agent and there are sufficient general appropriations to cover payment. *Viacom, Inc., v. United States*, 70 Fed. Cl. 649, 657 (Fed. Cl. 2006).

The parties agree that Mr. Terry and Ms. Eng entered into an agreement with Petitioner regarding a potential refund of taxes Petitioner paid in 2007. The parties also agree that only actual authority, not apparent authority, will bind the District of Columbia.[2] Finally, it appears that the parties agree that Mr. Terry and Ms. Eng lacked

[2] The doctrine of apparent authority does not bind the government in contract negotiations. *Williams*, 902 A.2d at 96 n.10.

express actual authority to enter into the purported settlement agreement.[3] However, the parties disagree over the applicability of implied actual authority in this matter, and whether the Anti-Deficiency Act would consequently make the underlying settlement agreement void *ab initio*. The Court must analyze the following: (a) whether implied actual authority can bind the District of Columbia in contracts; (b) whether Mr. Terry and Ms. Eng possessed implied actual authority to engage in the purported settlement; and (c) whether the Anti-Deficiency Act bars the instant settlement agreement as void *ab initio*.

(a) Implied Actual Authority in the District of Columbia.

The parties disagree as to whether implied actual authority may be used to bind the District of Columbia in its contracts. Implied actual authority exists "'when the employee cannot perform his [or her] assigned tasks without such authority and when the relevant agency's regulations do not grant the authority to other agency employees.'" *Aboo v. United States*, 86 Fed. Cl. 618, 628 (Fed. Cl. 2009) (quoting *SGS-92-X003 v. United States*, 74 Fed. Cl. 637, 652 (Fed. Cl. 2007)); *accord H. Landau & Co. v. United States*, 886 F.2d 322, 324 (Fed. Cir. 1989) (quoting J. Cibinic & R. Nash, *Formation of Government Contracts* 43 (1982)) ("Authority to bind the government is generally implied when such authority is considered to be an integral part of the duties assigned to a government employee."); *Sigal Constr. Corp. v. Stanbury*, 586 A.2d 1204, 1218 (D.C. 1991) (implied authority exists when the act of the agent is incidental to authorized conduct and furthers the principal's business). "Implied actual authority" differs from apparent authority because it focuses on the agent's understanding of his authority, while "apparent authority" focuses on the third party's understanding of the agent's authority.

[3] Express actual authority exists when the Constitution, a statute, or a regulation grants it to the negotiating agent in unambiguous terms. *Aboo v. United States*, 86 Fed. Cl. 618, 627 (Fed. Cl. 2009) (quoting *SGS-92-X003 v. United States*, 74 Fed. Cl. 637, 651 (Fed. Cl. 2007)).

Lewis v. Wash. Metro. Area Trans. Auth., 463 A.2d 666, 670 n.7 (D.C. 1983). Respondent appears to conflate the two, associating implied actual authority with apparent authority. However, as has been demonstrated in *Lewis*, implied actual authority and apparent authority are two dissimilar methodologies. Further, as shown in *Sigal* and *Lewis*, implied actual authority has been recognized in the District of Columbia in contract actions. Therefore, implied actual authority and apparent authority are distinct from each other.

Because the Court finds such a clear distinction between implied actual authority and apparent authority, the Court must determine whether implied actual authority can bind the District of Columbia. "[T]here is no difference in legal effect between express and implied authority." *Sigal*, 586 A.2d at 1218. "Only actual authority, express or implied, can bind the government." *Ascom Hasler Mailing Sys. v. U.S. Postal Serv.*, Civil Action No. 00-1401, 2012 U.S. LEXIS 113808, at *71 (D.D.C. Aug. 14, 2012); *see also H. Landau & Co. v. United States*, 886 F.2d 322, 324 (Fed. Cir. 1989) ("Although apparent authority will not suffice to hold the government bound by the acts of its agents, implied actual authority, like expressed actual authority, will suffice."); *Jumah v. United States*, 90 Fed. Cl. 603, 612 (Fed. Cl. 2009) ("Actual authority may be express or implied."); *Tracy v. United States*, 55 Fed. Cl. 679, 683 (Fed. Cl. 2003) (finding either express or implied authority can bind the government). "Implied actual authority 'is restricted to situations where such authority is considered to be an integral part of the duties assigned to a government employee.'" *Jumah v. United States*, 90 Fed. Cl. 603, 612 (Fed. Cl. 2009) (quoting *Aboo v. United States*, 86 Fed. Cl. 618, 627 (Fed. Cl. 2009)).

While the District of Columbia Court of Appeals has not applied the "implied actual authority" theory to the District of Columbia, federal courts have noted that implied actual authority is sufficient to form a binding contract with the federal government. As *Sigal* makes clear, there is no legal difference between express and implied actual authority. Further, as demonstrated by *Ascom*, *H. Landue*, *Jumah*, *Tracy*, and many other federal claim cases, implied actual authority may serve as the basis for binding the government. Based on the prevalent case law, the Court finds that an agent's implied actual authority may bind the District of Columbia.

(b) Whether Mr. Terry or Ms. Eng Possessed Implied Actual Authority.

Because the Court finds that implied actual authority binds the District of Columbia, the Court must review whether Ms. Eng or Mr. Terry had implied actual authority to enter into the settlement agreement.

Petitioner alleges it failed to receive notice that Mr. Terry and Ms. Eng lacked authority to approve the purported settlement agreement; therefore, because Petitioner could not know Mr. Terry or Ms. Eng lacked authority, their actions represented implied actual authority.

> Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority.

Fed. Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384 (1947); *see also Williams*, 902 A.2d at 96 ("[O]ne who contracts with a government agent is constructively notified of the limits of that agent's authority, and any reliance on contrary representations cannot be

reasonable."); *District of Columbia v. Greene*, 806 A.2d 216, 222 (D.C. 2002) ("It is a basic principle of District law that a contracting official cannot obligate the District to a contract in excess of his or her actual authority."). In order for the contracting party to know the limits of the government's agent's authority, there must be, at minimum, constructive notice. *Fed. Crop Ins. Corp.*, 332 U.S. at 384 (demonstrating that authority to enter into contracts may be limited, but that the limitation must be contained in statute or regulations properly exercised through rule-making power); *see, e.g., Leonard v. District of Columbia*, 801 A.2d 82, 86 (D.C. 2002) (finding that appellant was on constructive notice of the limits of an examiner's authority pursuant to D.C. Code § 1-623.40(2)); *compare Williams*, 902 A.2d at 94 (notice found in 31 U.S.C. § 1341 (2003), which prohibited agents for the government from negotiating contracts for future appropriations); *and Greene*, 806 A.2d at 222 (notice found in D.C. Code § 2-301.01, which set forth procedures for dispute resolution with government, thereby prohibiting arbitration as an option); *with Tex. Instruments, Inc.*, 922 F.2d at 815 (unpublished internal document insufficient to place a contracting party on notice). Based on this case law, while it is clear that a contracting party cannot avail itself to the agent's representations, there must be publicly-available notice before the contracting party may fear the limited nature of the agent's authority.

The question, therefore, is whether constructive notice existed. As an initial matter, the Court finds that the unpublished internal directive which purportedly limited Mr. Terry and Ms. Eng's authority to enter into settlement agreements equal to or greater than $500,000.00 did not provide sufficient notice. Non-public internal directives which purport to add limitations to an agent's authority will not divest a contracting officer of

his or her authority to bind the government. *Tex. Instruments, Inc*, 922 F.2d at 815. Further, by failing to publish the directive, the proposed rule is invalid and devoid of any legal effect. *See Rorie v. D.C. Dep't of Human Servs.*, 618 A.2d 148, 151 (D.C. 1992) (agency guidelines which were not promulgated in compliance with the D.C. Administrative Procedure Act were invalid). Therefore, the Court must determine whether other sources of law may have provided notice.

Respondent argues that D.C. Code § 1-204.24d (2012) provides sufficient constructive notice. The Office of Tax and Revenue is a subdivision of the Office of the Chief Financial Officer. D.C. Code § 1-204.24a. The Deputy Chief Financial Officer of the Office of Tax and Revenue, or his or her designee, agent, or representative, is charged with determining whether there has been an overpayment of income and franchise taxes. D.C. Mun. Regs. tit. 9, § 150.1 (2013); *see also id*. § 100.6. Pursuant to D.C. Code § 1-204.24d:

> [T]he Chief Financial Officer shall have the following duties and shall take such steps as are necessary to perform these duties:
>
> . . .
>
> (10) Supervising and assuming responsibility for the levying and collection of all taxes, special assessments, licensing fees, and other revenues of the District of Columbia (as may be required by law), and receiving all amounts paid to the District of Columbia from any source (including the Authority).
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> . . .
>
> (14) Certifying all contracts and leases (whether directly or through delegation) prior to execution as to the availability of funds to meet the obligations expected to be incurred by the District government under such contracts and leases during the year.
>
> . . .

> (16) Certifying and approving prior to payment of all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government, and determining the regularity, legality, and correctness of such bills, invoices, payrolls, claims, demands, or charges.

D.C. Code § 1-204.24d. In particular, it is up to the Chief Financial Officer to determine the "correctness of such . . . claims, demands, or charges," D.C. Code § 1-204.24d(16). A party seeking a refund is making a "claim for refund." *See* D.C. Code § 47-3310(a); *see also* D.C. Code § 47-2020; D.C. Code § 47-811.02(b). While D.C. Code § 1-204.24d(14) provides that the Chief Financial Officer is charged with "certifying all contracts," and may be done so through delegation, the certification is limited to "the availability of funds to meet the obligations." Conversely, D.C. Code § 1-204.24d(16) contains no delegation provision, and expressly provides that the Chief Financial Officer shall approve payments. However, the Chief Financial Officer may take "such steps as are necessary" to approve payments. The Government appears to have deemed delegation as a necessary step, as the Government has conceded that Mr. Terry and Ms. Eng had authority to settle cases.

While a reading of D.C. Code § 1-204.24d provides that decisions involving claims must be approved by higher officials, it is unclear whether this is sufficient on its face to provide constructive notice. However, upon consideration of *Leonard*, it appears that D.C. Code § 1-204.24d is insufficient. As an initial matter, the Court notes that, unlike the parties in *Leonard*, there were no other warnings provided to Petitioner which would place Petitioner on notice that approval from a superior was necessary. *See Leonard*, 801 A.2d at 86 (noting that the government's agent provided warnings that supervisors had to agree to the settlement). However, the Court noted that this was not essential to the analysis. *Id.* In *Leonard*, D.C. Code § 1-623.35(a) (2001), which

provided that any lump sum settlement required approval from the Mayor or his or her designee, placed the contracting party on sufficient notice that the District of Columbia's agent's authority to complete a settlement contract was limited. *Id*. Further, there was "no evidence . . . that this claims examiner (or any other) had been sub-delegated the Director's statutory authority." *Id*. In this matter, D.C. Code § 1-204.24d does not provide any such limitation. While it is the Chief Financial Officer's duty to approve payments, it is clear that the Chief Financial Officer has not been the sole voice in the approval process for tax settlement agreements. This leads to an untenable situation: either all settlement agreements approved by an official other than the Chief Financial Officer are void, or delegation is proper in this matter. Even if the Court concludes that the language in D.C. Code § 1-204.24d is similar to the language contained in D.C. Code § 1-623.35(a) (2001), the Court also notes a key difference: in *Leonard*, there was no evidence of sub-delegation, whereas both parties have admitted that sub-delegation existed in the negotiation of settlement agreements.

The Court notes that, generally, constructive notice has been found in far more explicit language than the language contained in D.C. Code § 1204.24d. *See, e.g., Williams*, 902 A.2d at 94 (31 U.S.C. § 1341 (2003) explicitly barred agents for the government from negotiating contracts for future appropriations); *Leonard*, 801 A.2d at 86 (notice that agent's authority was limited contained in D.C. Code § 1-623.35(a) (2001), which provides: "The claimant may enter into an agreement with the Mayor or his or her designee for a lump-sum settlement. Such settlements must be in writing and signed by the Mayor or his or her designee and the claimant."); *Chamberlain v. Barry*, 606 A.2d 156, 159 (D.C. 1992) (oral promise could not be relied upon because D.C.

Code § 45-2533(a) required that a tenant assistance contract be executed before public funds could be expended); *Coffin v. District of Columbia*, 320 A.2d 301, 304 (D.C. 1974) (Section 4-809 of the District of Columbia Procurement Manual explicitly stated that any procurement in excess of $2,500.00 must be negotiated and finalized by the Procurement Office, not by the agency director); *Winder v. District of Columbia*, 555 F. Supp. 2d 103, 110 (D.D.C. 2008) (D.C. Mun. Regs. tit. 6 § 2602.3 (2003) provided notice that plaintiff's pension plan did not vest because it explicitly stated that vesting cannot occur until the participant attains five years of credible service). Each of these examples of notice provided unambiguous prohibitions and guidelines for contracts. The problem the Court faces with D.C. Code § 1-204.24d is that it is far less clear than any example it has reviewed. The only potential notice is that the Chief Financial Officer has the duty to approve the payment of funds. This cannot be said to rise to the level of constructive notice based on the current precedent. Further, the negotiations at issue did not center on a refund "amount;" rather, Mr. Terry and Ms. Eng discussed a reevaluation of the whether to use a "Cost of Performance" apportionment, which in turn would reduced Petitioner's tax burden. Complaint Ex. B, *Boston Props. Ltd. P'ship*, Case No. 2012 CA 003660 B (D.C. Super. Ct. Apr. 26, 2012). This form of negotiation, which represented a change in calculation rather than a straightforward "settlement," is not listed among the Chief Financial Officer's duties in D.C. Code § 1-204.24d. Therefore, considering the language of the statute, and the admitted sub-delegation of settlement authority, the Court finds that D.C. Code § 1-204.24d did not provide constructive notice to Petitioner that Mr. Terry and Ms. Eng's authority to negotiate settlement agreements could be limited.

It is clear that Mr. Terry and Ms. Eng had implied actual authority to engage in settlement discussions and settle tax disputes. To now attempt to strip that authority from them without notice would completely undermine the rational of *Leonard*. The Government is granted great leeway to prevent agents from binding it, but constructive notice is required. In this matter, constructive notice simply did not exist. Therefore, Mr. Terry and Ms. Eng had authority to bind the Government in contract negotiations.

(c) Whether the Anti-Deficiency Act Applies.

While Respondent only briefly mentions it, the Court notes that, pursuant to the District of Columbia's Anti-Deficiency Act, the instant settlement agreement is not void *ab initio* because it pledges funds for which no appropriation has been designated. The District of Columbia's Anti-Deficiency Act provides as follows:

> A District agency head, deputy agency head, agency fiscal officer, agency budget director, agency controller, manager, or other employee may not:
>
> (1) Make or authorize an expenditure or obligation exceeding an amount available in an appropriation for an agency, fund, or capital project;
>
> (2) Obligate the District for the payment of money before an appropriation is made or before a certification of the availability of funds is made, unless authorized by law; provided, that this paragraph shall not prohibit the acceptance of voluntary services or employment of personal services exceeding that authorized by law during emergencies involving the safety of human life or the protection of property;
>
> (3) Approve a disbursement without appropriate authorization . . . .

D.C. Code § 47-355.02 (2012); *accord* D.C. Code § 1-204.46 ("no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act."). This is substantially similar to the federal Anti-Deficiency Act. *See* 31 U.S.C. § 1341 (2012). "[A]ll contracts for future payments of money, in advance

of or in excess of existing appropriations, are void ab initio." *Williams*, 902 A.2d at 94. In this matter, however, such appropriation has already been made. "There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government." Pub. L. No. 111-117, § 803, 123 Stat. 3034, 3222 (Dec. 16, 2009). If Congress had appropriated "sufficient legally unrestricted funds to pay the contracts at issue," the Government may not attempt to back out on a promise to pay based on a theory of insufficient appropriations. *Cherokee Nation of Okla. v. Leavitt*, 543 U.S. 631, 637 (2005); *accord Viacom, Inc. v. United States*, 70 Fed. Cl. 649, 657 (Fed. Cl. 2006) ("[T]he government may not hide behind the Anti-Deficiency Act when there is a binding obligation to pay and the government has general appropriations sufficient to cover the contractual obligation."). In this matter, pursuant to the ever-reaffirmed appropriation, there are sufficient revenues appropriated for the settlement of this matter.

Further, at its root, this is a conflict over the repayment of a tax refund. "Where there has been an overpayment of any tax, the amount of the overpayment shall be refunded to the taxpayer." D.C. Code § 47-3310(a). Monies paid in excess of those owed in taxes are not the property of the District of Columbia; rather they are owed to the taxpayer and must be returned. *See King v. King*, 578 S.E.2d 806, 812 (Va. App. 2003) ("An income tax refund is nothing more than a return of income."). Thus, Respondent's position creates an additional roadblock to a taxpayer attempting to retrieve a refund on its income. This seems improper: an appropriation should not be an impediment to a taxpayer attempting to retrieve its own property. Interestingly, Respondent's position

appears inconsistent: if Respondent simply agreed that the refund request reflected an accurate accounting of an overpayment, Respondent may have been required to refund the overpayment without any consideration of an appropriation. Thus, because funds in this matter are appropriated and available, the Anti-Deficiency Act is not a barrier to a refund.

IV. CONCLUSION

An agent of the District of Columbia may bind the District of Columbia in contracts if the agent possesses actual authority. However, actual authority may either be express or implied. In the instant matter, where no express actual authority existed, Mr. Terry and Ms. Eng required implied actual authority to bind the District of Columbia to the purported settlement agreement. The Court finds that implied actual authority existed in this particular matter. Further, pursuant to *Leonard*, the Court finds that D.C. Code § 1-204.24d did not provide sufficient notice to the parties that Ms. Eng and Mr. Terry lacked authority to engage in settlement negotiations. Therefore, the settlement agreement should bind the Government.

WHEREFORE, it is this 24th day of January, 2014,

ORDERED, that the District of Columbia's Motion for Summary Judgment is **DENIED**; and it is

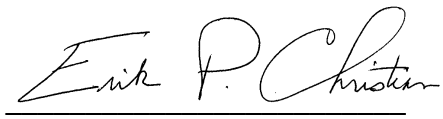
FURTHER ORDERED, that Petitioner Boston Properties Limited Partnership's Cross-Motion for Summary Judgment is **GRANTED**; and it is

FURTHER ORDERED, that a separate judgment shall be entered herein; and it is

FURTHER ORDERED, that this matter is **DISMISSED WITH PREJUDICE**; and it is

FURTHER ORDERED, that this case is **CLOSED**.

SO ORDERED.



ERIK P. CHRISTIAN
J U D G E
(Signed-in-Chambers)

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