



State Board of Equalization - Sales and Use Tax Department

REPORT OF FIELD AUDIT

Account No: [REDACTED] 907

Firm Name:

Owner:

Owner Type:

Business Address:

Mailing Address:

Case Id:

Lead Auditor:

Supervisor:

Board Office:

Audit Report Date:

Business Code/SIC:

Account Status:

Tax Area Code:

A Local Tax Allocation was completed

Report Mailed to the following Additional Addresses

MC CLELLAN DAVIS, LLC
508 GIBSON DR STE 120
ROSEVILLE, CA 95678-5797

LIABILITY (OR CREDIT) DISCLOSED BY EXAMINATION OF TAXPAYER'S RECORDS

Examination Period:	Tax	Interest to 1/31/17	Penalty	Total
Total Disclosed by Examination	2,207,382.73	1,596,823.78		3,804,206.51
Balance as of	2,207,382.73	1,596,823.78	60.00	3,804,206.51

**If multiple billings have occurred, the audit liability may not equal the sum of the billings

TAXABLE MEASURE DISCLOSED BY EXAMINATION OF TAXPAYER'S RECORDS

	State, Local County and SIII	Total District
1 Unreported Ex-tax Purchases of Fixed Assets and Consumable Supplies Based on Selected Chart of Accounts	299,140	598,280
2 Disallowed Claimed Exempt Sales of Medicines and Medical Devices Per Statistical Sampling	12,020,363	14,951,479
3 Unreported Taxable Patient Per Day Sales Based on Application of Audited Taxable Percentage	15,683,893	19,877,508
	28,003,396	35,427,267



CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
SETTLEMENT AND TAXPAYER SERVICES BUREAU
450 N STREET, MIC 87
P.O. BOX 942879, MIC 87
SACRAMENTO, CA 94279-0087
(916) 324-2836 • FAX (916) 323-3387
www.cdtfa.ca.gov; settlement@cdtfa.ca.gov

GAVIN NEWSOM
Governor

MARYBEL BATJER
Secretary, Government Operations Agency

NICOLAS MADUROS
Director

July 12, 2019

Mr. Jesse McClellan
McClellan Davis, LLC
508 Gibson Drive, Suite 120
Roseville, CA 95678

Re: [REDACTED]
[REDACTED] 907
[REDACTED]

Mr. McClellan:

This letter confirms the understanding we reached during our settlement discussions regarding the settlement proposal submitted for the above-referenced matter. Pursuant to our negotiations, the tentative settlement amount is **\$2,250,000.00**.

Enclosed please find a formal settlement agreement that is necessary to proceed with the approval process. Please review the settlement agreement and return a signed and dated version to me by e-mail or at the above address within **15 days** of this letter. After I receive the signed settlement agreement, I will prepare a settlement recommendation that will be forwarded for review through the formal approval process. We will notify you in writing once the settlement has been approved. Please note that upon formal approval of the settlement agreement, the unpaid settlement amount will begin to accrue interest on the first day of the month following the due date of the initial payment. Thank you for working with us to resolve this matter. If you have any questions, please do not hesitate to contact me at [REDACTED]

Sincerely,

[REDACTED]

Enclosure: Settlement Agreement

cc: [REDACTED]

[REDACTED]

BEFORE THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

In re: Twin Med LLC
011-817907
Appeals Case ID's:¹ 018066 and 018068

NOTICE OF DETERMINATION

Case ID: 018066
Notice of Determination: January 18, 2018
Liability Period: April 1, 2005, through March 31, 2008
Liability as stated on the Notice of Determination:

Tax:	\$1,768,479.29
Interest:	\$1,402,263.84
Penalty:	\$ 0.00
Total:	<u>\$3,170,743.13</u>

CLAIM FOR REFUND

Case ID: 018068
Claim for Refund: February 2, 2018
Period: April 1, 2005, through March 31, 2008
Amount Claimed: \$1 or more

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made under the authority provided in California Revenue and Taxation Code section (Section) 7093.5. The purpose of this Agreement is to settle the disputes with the Notice of Determination issued to Twin Med LLC (Petitioner) by California Department of Tax and Fee Administration (CDTFA) on January 18, 2018 (Determination), and the dispute with respect to the Claim for Refund dated February 2, 2018 (Claim) that Petitioner filed with the CDTFA. Collectively, Petitioner and CDTFA will be referred to as "the parties."

¹ The Appeals Case IDs listed above was generated under CDTFA's new computer system effective May 7, 2018. The legacy case IDs associated with the issue(s) addressed in this Settlement Agreement are 1046645 and 1046987. This Settlement Agreement will resolve and close out both the newly issued Appeals Case ID number(s) and the legacy case ID number(s). Please note that the Agreement and subsequent correspondence will reference only the newly assigned Appeals Case ID number(s).

RECITALS

A. The January 18, 2018 Determination imposes a total amount of tax of \$1,768,479.29 with interest of \$1,402,263.84 for a total due of \$3,170,743.13 (the "total liability") for the period April 1, 2005, through March 31, 2008. The Determination, including any adjustments to the Determination, is incorporated into this Agreement by this reference. With interest through July 31, 2019, the total liability (tax and interest) currently at issue under the Determination is \$3,359,380.80.

B. Petitioner timely filed a protective Claim for Refund (Case ID: 018068) dated February 2, 2018 for the period April 1, 2005, through March 31, 2008 for any payments made against the audit liability. The Claim is incorporated into this Agreement by this reference.

C. Petitioner submitted an appeal or protest of the Determination, which was accepted into the administrative appeals process, and the Determination and the Claim are now civil tax matters in dispute. The parties desire to enter into this Agreement in order to resolve this dispute arising from the Determination and the Claim, and to make a final and complete settlement of the total liability assessed in the Determination.

D. If this Agreement reduces tax and/or penalties in excess of five thousand dollars, then it will be reflected in the settlement recommendation to be submitted to the California Attorney General for review and comment and to CDTFA for approval, as required in Section 7093.5, subdivisions (b)(2), and (e). If this Agreement reduces tax and/or penalties of five thousand dollars or less, then it will be reflected in the settlement recommendation to be submitted to the director and chief counsel of CDTFA for their joint approval, as required under Section 7093.5, subdivision (b)(3). As required, approval of the settlement recommendation by CDTFA or the joint approval by the director and chief counsel of CDTFA, as applicable, will mean that the terms set forth in this Agreement are reasonable from an overall perspective, in the best interests of the State of California, and in accordance with Section 7093.5.

E. Under Section 7093.5, subdivision (f) this settlement shall be final and non-appealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

F. To the extent it is determined that any provision or clause in the Settlement Agreement exceeds CDTFA's authority under Section 7093.5, it shall have no force or effect.

G. Participation in CDTFA's settlement program under Section 7093.5 (Settlement Program) does not suspend CDTFA's ability to pursue collection action on a final liability.

AGREEMENT

Accordingly, IT IS STIPULATED AND AGREED that:

1. SETTLEMENT AMOUNT

(a). Petitioner agrees to pay **\$2,250,000.00** (the “settlement amount”) in U.S. Dollars.

(b). Petitioner has paid \$0.00 to CDTFA towards the settlement amount, leaving an unpaid balance of **\$2,250,000.00** on the settlement amount. Petitioner agrees to make payments to CDTFA under Section 1, subdivision (c), of this Agreement.

(c). Petitioner agrees to pay the sum of **\$500,000.00** to CDTFA within thirty (30) days after notice that the settlement recommendation has been approved under Section 7093.5. This payment may be paid any time before the due date. This payment will be considered the “lump-sum payment,” or if Petitioner is making installment payments it will be considered the “initial payment.”

Petitioner agrees to pay the remaining balance of the settlement amount in **23** number of equal monthly installment payments immediately following the initial payment. These equal monthly installment payments will be calculated upon approval and execution by CDTFA of the Agreement, and will include interest that accrues on the unpaid balance under Section 1, subdivision (d). Upon approval and execution of the Agreement by CDTFA, CDTFA will notify Petitioner of the amounts due and due dates of the monthly installment payments.

If requested by CDTFA to do so, Petitioner agrees to pay the installment payments through automatic monthly electronic debits from a designated bank account (AutoPay). If requested by CDTFA to do so, Petitioner agrees to provide CDTFA with a fully completed and executed CDTFA-407-CA Automatic Payment Authorization Form (AutoPay Form). Failure to provide the AutoPay Form, when requested to do so, or timely update such form, if Petitioner’s bank account information changes, may at CDTFA’s discretion result in collection action being taken. Petitioner is responsible for any overdraft fees. In addition, Petitioner is responsible for meeting any terms and conditions set forth in the AutoPay Form. Petitioner may be charged a fee by Petitioner’s financial institution for using AutoPay.

If there is a remaining balance due under the Agreement, after the lump-sum payment is made (or, if applicable, after all installment payments are made), Petitioner is responsible for paying that remaining balance.

All payments or credits are subject to verification by CDTFA.

(d). On the first day of the month following the due date of the initial payment or lump-sum payment, interest shall accrue on the unpaid balance of the settlement amount based on CDTFA rules for the application of interest at an interest rate equal to the rate established in Section 6482. This interest rate is subject to periodic adjustments under Section 6482. Regarding interest that accrues due to late or missed lump-sum payment, or late or missed installment payment, this additionally accrued interest will be added to the last scheduled installment

payment or, if no more installment payments are due, Petitioner is responsible for paying that remaining balance or, in the event Petitioner fails to pay that remaining balance, will be subject to collection action for the remaining balance under Section 4 of this Agreement.

(e). Petitioner may prepay any amount under this Agreement; provided that when a prepayment is received, Petitioner is current with any outstanding amounts due under this Agreement. If Petitioner is not current with amounts due under this Agreement when the prepayment is received, then the prepayment will first be applied to any outstanding amounts due under this Agreement. If Petitioner is current with all amounts due, but does not designate how a prepayment is to be applied, then the prepayment shall be applied to the first due amount under this Agreement.

(f). By signing this Agreement, Petitioner waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Agreement, except as expressly stated to the contrary in this Agreement. No delay or omission by CDTFA will operate as a waiver of its rights under this Agreement.

(g). Petitioner's total liability under the Determination and the dispute will be adjusted to the settlement amount upon approval and execution of the Agreement by CDTFA. Petitioner is responsible for paying this amount under the terms of the Agreement.

2. EFFECTIVE DATE

Provided that the settlement recommendation has been approved under Section 7093.5, this Agreement becomes effective upon the date of execution of the Agreement by an authorized officer or employee of CDTFA. If this Agreement does not become effective for any reason, it shall have no force or effect.

3. REDETERMINATION OF LIABILITY AND NOTICE OF SETTLEMENT

Once the entire Agreement has been approved and executed, this Agreement shall become a final "order or decision of [CDTFA]" and the liability established in the Determination will be redetermined or adjusted in accordance with this Agreement. By entering into this Agreement, Petitioner expressly waives the thirty (30) day period set forth in Section 6564. Once the Agreement has been approved and executed, Petitioner will receive a Notice of Redetermination (or Notice of Settlement) that reflects the settlement amount under this Agreement.

The adjustment in the Notice of Redetermination (or Notice of Settlement) may only be changed due to: (A) clerical error or mistake on the part of CDTFA; (B) a showing of fraud or misrepresentation with respect to a material fact under Section 7093.5, subdivision (f); (C) to the extent any part of this Agreement is determined to exceed CDTFA's settlement authority under Section 7093.5; or (D) if reasonable collection action of the settlement amount is unsuccessful under Section 4 of this Agreement.

4. COLLECTION OF THE SETTLEMENT AMOUNT AND EFFECT OF FAILURE TO MEET PAYMENT TERMS AND CONDITIONS OF AGREEMENT

If Petitioner fails to make any required payment by the due date, Petitioner may be subject to any collection activity CDTFA may take on a final liability including but not limited to liens, garnishment, penalties (including a finality penalty), and fees associated with collection activity. If reasonable collection action is unsuccessful in obtaining full payment of the settlement amount, including accrued interest and penalties and fees associated with collection action, then, at the sole discretion of CDTFA, the liability in existence immediately prior to the effective date of this Agreement (including any previous reaudit adjustments, revised audit adjustments, accrued interest, and/or penalties that existed or would have existed or accrued absent a Notice of Redetermination [or a Notice of Settlement] made under this Agreement) may be reestablished.

5. NOTICES

All notices and deliveries required or permitted to be given under this Agreement shall be in writing and shall be either delivered personally or mailed by First Class U.S. Mail, postage prepaid, to the parties at the following addresses:

If to CDTFA:	Settlement Section California Department of Tax and Fee Administration 450 N Street, MIC:87 P.O. Box 942879 Sacramento, CA 94279-0087
If to Petitioner:	Twin Med LLC 11333 Greenstone Avenue Santa Fe Springs, CA 90670
With a copy to:	McClellan Davis, LLC 508 Gibson Drive, Suite 120 Roseville, CA 95678 Attn: Jesse McClellan

Personally delivered notices and documents shall be deemed given and delivered upon actual personal delivery to the intended recipient. Mailed notices and documents shall be deemed given and delivered upon the earlier of three (3) business days after deposit into the First Class U.S. Mail, with postage fully prepaid, or the date of actual receipt as evidenced by a return receipt, if any.

6. SETTLEMENT OF DISPUTE(S)

Both parties agree that the settlement applies to the Determination, the Claim, and any disputes stemming from the Determination and the Claim, including any rights to a hearing on this matter at the Office of Tax Appeals or any pending hearing on this matter at the Office of Tax Appeals. Both parties agree that this settlement does not apply to and has no effect on any established or potential liabilities not addressed or included in the Determination or the Claim.

By entering into this Agreement, neither party is conceding the merits of the other party's position in disputes arising from the Determination or the Claim. By entering into this Agreement, CDTFA does not concede that any particular transactions included in the Determination or the Claim are nontaxable transactions, nor that Petitioner should not report the same or similar transactions as taxable in future periods.

7. NON-PRECEDENTIAL

The terms of this Agreement are non-precedential.

8. WAIVER AND RELEASE

By entering into this Agreement, Petitioner releases and discharges CDTFA and its successors in interest from, and relinquishes any and all past, present, or future claims, demands, obligations, or causes of action for compensatory or punitive damages, costs, losses, expenses, and compensations which Petitioner has against CDTFA arising from or on account of the Determination, the Claim, the disputes, and/or the facts and circumstances set forth herein; provided, however, that this release shall not apply to claims arising out of or based upon a breach of any of the provisions of this Agreement or to any action taken to enforce this Agreement.

By entering into this Agreement, Petitioner waives with prejudice any and all rights to file an administrative claim for refund, under Section 6904 or otherwise, with regard to any item included in the Determination or the disputes for the period addressed in the Determination or the Claim.

By entering into this Agreement, Petitioner waives with prejudice any and all rights to file an action against CDTFA, under Section 6933 or otherwise, with regard to any item included in the Determination, the Claim, or the disputes for periods addressed in the Determination or the Claim.

9. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. By entering into this Agreement, the parties agree to submit to the jurisdiction of the California courts in any action relating to this Agreement or the enforcement or interpretation of the terms and conditions of this Agreement. Proper venue shall be in the appropriate court in the County of Sacramento.

10. FEES AND COSTS

Except for any potential fees associated with collection activity upon Petitioner's failure to pay the settlement amount under the terms of this Agreement, if applicable, each party shall bear any and all fees and costs arising from the actions of its own counsel in connection with the Determination, the disputes, and the resolution of the disputes, including without limitation those fees and costs relating to or stemming from the negotiation, execution, performance, and/or enforcement of this Agreement.

11. TAX LIABILITY FOR OTHER MATTERS AND OTHER PERIODS

This Agreement applies only to the Determination, the Claim, and the disputes between the parties stemming from the Determination or the Claim. Notwithstanding the terms of this Agreement, this Agreement shall not limit CDTFA's ability to make further adjustments to Petitioner's sales and use tax liability arising out of or stemming from other facts and circumstances, or relating to or arising from other determinations not covered by this Agreement. This Agreement shall likewise not limit Petitioner's ability to contest such determinations.

Further, this Agreement shall not affect any limitation periods for deficiencies or for filing claims for refund. However, any deficiencies or claims for refund filed regarding periods addressed in the Determination or the Claim, if any, must pertain only to items not included in the Determination and the Claim, and not arising out of or stemming from the facts and circumstances of the Determination, the Claim, or dispute(s).

12. NO ADMISSION OF LIABILITY; INADMISSIBILITY

Nothing contained in this Agreement shall be construed as an admission on the part of any party or person or evidence of any claims, demands, causes of action, obligations, damages, liabilities, facts, or legal conclusions asserted by any party or person. Under California Evidence Code section 1152, the terms of this Agreement shall not be admissible for purposes of establishing liability in any civil action, court of law, administrative proceeding, or hearing, except as may be necessary to enforce the terms of this Agreement.

13. CONFIDENTIALITY OF AGREEMENT

The parties agree to keep the terms and conditions of this Agreement confidential, including the contents of all settlement discussions or settlement communications related to this Agreement, except as necessary for CDTFA to obtain approval of the settlement, to satisfy CDTFA's Public Notice requirements, or to effectuate the terms of this Agreement including CDTFA's collection action on the settlement amount, or to the extent Petitioner needs to provide a copy of the Agreement in any legal proceeding or to any successor, lender, purchaser, or purchaser's agent. The parties may waive confidentiality upon mutual written consent.

14. ENTIRE AGREEMENT

Except as may be provided in Section 1, subdivision (c) of this Agreement, this Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than, if applicable, those contained or attached to this Agreement in the AutoPay Form. This Agreement supersedes all prior agreements or understandings, whether written or oral, of the parties hereto. Petitioner acknowledges that no representations of fact or opinion were made by CDTFA or anyone on CDTFA's behalf to induce Petitioner to execute this Agreement relating to the nature, basis, or amount of the settlement.

15. WARRANTIES

Each party represents and warrants to the other party that its signatory to this Agreement has the authority to execute this Agreement on its behalf.

16. EFFECT ON SUCCESSORS

This Agreement is binding on the parties and their personal representatives, successors in interest, assignees for the benefit of creditors, and bankruptcy trustees of the parties, and each of them.

[Signature Page Follows]

By signing below, Taxpayer, upon approval and execution of this Agreement by CDTF, agrees to withdraw any pending appeal or action Taxpayer may have with the Office of Tax Appeals relating to issues addressed in this Agreement.

Twin Med LLC

Date: _____

By: _____

Capacity

California Department of
Tax and Fee Administration

Date: _____

By: _____

Capacity