



# INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: INDIANA DEPARTMENT OF REVENUE  
TITLE: CONTINGENCY FEE CONTRACT  
CASE ID: 2021-08-0238  
DATE: August 16, 2021

*After examination and review, Office of Inspector General Chief Legal Counsel Tiffany Mulligan reports as follows:*

The purpose of this Report is to fulfill the statutory requirements of Ind. Code §4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics set forth in Ind. Code 4-2-6 and 42 IAC 1-5 (Code of Ethics) or any statute or agency rule concerning conflicts of interests.

On August 13, 2021, the Indiana Department of Revenue (DOR) notified the IG that it wished to enter into a contingency fee contract with Mattingly Burke Cohen & Biederman LLP, an Indianapolis based law firm (the Firm)<sup>1</sup>. DOR has requested representation by the Firm in connection with a Tax Court case entitled *Wicker v. Indiana Department of State Revenue*, Cause No. 21T-TA-00019 (the Case). The State will compensate the Firm through a contingency fee in

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<sup>1</sup> The IG has reviewed six previous requests from DOR to enter into a contingency fee contract with the Firm to represent DOR in other Tax Court cases. The IG issued Investigative Reports in response to these requests as follows: 1.) [2017-10-0223](#); 2.) [2017-11-0268](#); 3.) [2018-04-0103](#); 4.) [2018-07-0207](#); 5.) [2018-10-0295](#); and 6.) [2019-01-0002](#).

the amount of fifteen percent of any amount recovered. The Firm also will charge the State a reduced hourly fee of \$225 an hour.

Pursuant to Ind. Code §4-6-3-2.5(b), DOR is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. DOR must consider five factors when making this determination as outlined by Ind. Code §4-6-3-2.5(c). DOR made such a determination and considered all the factors outlined in the statute.

DOR's determination explains that the Case requires defense of highly technical and fact sensitive tax appeals related to complex research expense credit issues. DOR provides that the Firm has successfully litigated a similar case, *Tell City Boatworks, Inc. v. Indiana Department of State Revenue*, involving research expense credit issues. DOR asserts that the Case will require substantial initiative and time to litigate successfully. The Case presents factually and legally complicated issues that will require extensive discovery and the retention of expert witnesses to develop the facts relevant to complicated state and federal tax laws. Apart from opposing firms in the *Tell City* case, DOR is unaware of any attorneys, other than attorneys with the Firm, who have ever litigated a research expense credit case in Indiana's Tax Court. DOR notes that both the Firm and the Tax Court are located in Indianapolis, and most of the witnesses and documents are located in Marion County or nearby counties.

Ind. Code §4-6-3-2.5(d) requires an agency to request proposals from private attorneys wishing to provide services on a contingency fee basis, unless the agency, in this case DOR, determines in writing that requesting proposals is not feasible under the circumstances. DOR did not request proposals from private attorneys or firms to undertake the Case because DOR determined it was not feasible under the circumstances due to DOR's unique needs and the unique

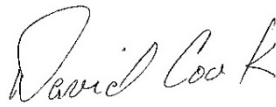
nature of the Case. DOR determined that the Firm's lawyers possess unique and valuable experience in the litigation of research expense credit cases.

After careful examination and review, the IG has determined that the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. According to DOR, no DOR employee has any ownership or other interest in the Firm, nor do any of the DOR personnel involved in the contracting decision work for or have any relatives working at the Firm. Because of that, it does not appear that any DOR employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor.

Based on the information provided, we find that entering into the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. This Report is issued in compliance with the above noted statutory requirements.

Dated: August 16, 2021

APPROVED BY:



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David Cook, Inspector General