

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

TOWN OF WESTPORT,	)	
	)	Case No. 3:23-cv-01205-SRU
Plaintiff and Counterclaim Defendant,	)	
	)	February 20, 2024
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant and Counterclaim Plaintiff.	)	
_____	)	

**DEFENDANT UNITED STATES OF AMERICA’S AMENDED ANSWER AND  
COUNTERCLAIM**

Defendant United States of America, with the written consent of Plaintiff Town of Westport pursuant to Fed. R. Civ. P. 15(a)(2), hereby amends its answer to the complaint to assert a counterclaim, as set forth below:

**FIRST DEFENSE**

To the extent Plaintiff’s administrative claim for refund varies from the allegations contained in the complaint, such difference constitutes an impermissible variance, and the Court lacks jurisdiction over the refund action.

**SECOND DEFENSE**

As for its second defense, the Defendant United States responds to the allegations set forth in the separate paragraphs of the Plaintiff’s complaint (*italics*) by stating and alleging as follows (any allegations not admitted are denied):

**I. PARTIES**

1. *Plaintiff is a municipal corporations and a political subdivision of the State of Connecticut, created pursuant to the laws of the State of Connecticut.*

**ANSWER:** Admits.

2. *Defendant is the United States of America, by its agency, the Internal Revenue Service (“IRS”).*

**ANSWER:** Admits, except denies that the IRS is an “agency.” The United States avers that the IRS is a bureau within the Department of Treasury.

3. *For purposes of reporting to the IRS, Plaintiff’s Employer Identification Number is [xx-xxxx128], which is reflected on all returns and claims described below.*

**ANSWER:** Admits.

4. *The actions complained of herein were taken by representatives of the Commissioner of Internal Revenue.*

**ANSWER:** Lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

## **II. JURISDICTION AND VENUE**

5. *This is an action under the Internal Revenue Code (“IRC”) for the recovery and refund of federal employment taxes, accrued interest, and penalties erroneously and illegally assessed against and collected from Plaintiff, including, but not limited to, tax refunds which have been assessed and withheld by the IRS, pursuant to the Claims for Refunds filed in accordance with the law and regulations thereof, for taxable quarters ended March 31, 2020 (“Q1 2020”) and December 31, 2020 (“Q4 2020”) (collectively the “Refunds Claims”).*

**ANSWER:** The United States admits that Plaintiff’s refund suit stems from the alleged erroneous or illegal assessment of penalties and interest thereon regarding the employment taxes (federal income and Federal Insurance Contributions Act (“FICA”) taxes) reported on Form 941, Employer’s Quarterly Federal Tax Return, for quarterly tax periods

ending on March 31, 2020 and December 31, 2020, for which claims for refunds were filed; otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations.

6. *This Court has jurisdiction over the subject matter of this complaint pursuant to the following statutory provisions:*

- a. 28 U.S.C. 1331 (Judicial Code, federal question jurisdiction);
- b. 28 U.S.C. 1340 (Judicial Code jurisdiction concerning internal revenue laws);
- c. 28 U.S.C. 1346(a)(1) (Judicial Code jurisdiction concerning the recovery of erroneously or illegally assessed or collected internal revenue taxes);  
and
- d. 26 U.S.C. 7422 (Internal Revenue Code jurisdiction for civil action for refund).

**ANSWER:** Admits, except as stated in the First Defense.

7. *Venue is proper in the United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 1402(a)(2) because the Plaintiff is located in Connecticut and the conduct occurred in Connecticut.*

**ANSWER:** Admits.

### **III. FACTUAL BACKGROUND**

#### **A. The Q1 2020 Claim for Refund**

8. *The Town's assessed payroll tax liability for Q1 2020 was \$4,519,904.16.*

**ANSWER:** The United States admits that on August 22, 2022, the IRS made an assessment against Plaintiff for employment taxes for the quarterly tax period ending March 31,

2020, in the amount of \$4,519,904.16; otherwise denies.

9. *During Q1 2020, the Town deposited \$4,519,607.91 in normal payroll tax deposits for that respective quarter.*

**ANSWER:** Admits.

10. *The Town timely filed its Q1 2020 Form 941 on May 7, 2020.*

**ANSWER:** Admits that the Plaintiff filed a Form 941 for the first quarter of 2020 on May 7, 2020; otherwise denies. The United States avers that Plaintiff was required to file a Form 941 for the first quarter of 2020 on or before April 30, 2020.

11. *On April 1, 2020, the Town made its first payroll tax deposits for the taxable quarter ended June 30, 2020 (“Q2 2020”) in the amounts of \$354,302.28 and \$88,440.90.*

**ANSWER:** Admits. The United States avers that these deposits were initially applied to the first quarter of 2020 and then re-applied to the second quarter of 2020 as a correction.

12. *The IRS initially incorrectly credited the \$354,302.28 and \$88,440.90 deposits to Q1 2020 instead of Q2 2020.*

**ANSWER:** The United States admits that IRS records for the first quarter of 2020 show that Plaintiff made federal tax deposits in the amounts of \$354,302.28 and \$88,440.90 on April 1, 2020, and that those amounts were then re-applied to the second quarter of 2020. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

13. *The IRS then removed from Q1 2020 and transferred to Q2 2020 the \$354,302.28 and \$88,440.90 deposits.*

**ANSWER:** The United States admits that IRS records for the first quarter of 2020 show that Plaintiff made federal tax deposits in the amounts of \$354,302.28 and \$88,440.90 on April 1,

2020, and that those amounts were then re-applied to the second quarter of 2020. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

14. *Although the Town had timely filed its Q1 2020 Form 941 and paid in full substantially all Q1 2020 payroll taxes,<sup>1</sup> the IRS subsequently lost and failed to process the Town's timely filed Q1 2020 Form 941.*

**ANSWER:** The United States denies Plaintiff timely filed a Form 941 for the first quarter of 2020 and admits that the IRS has now located the Form 941 it received on May 7, 2020; otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

15. *As a result, the IRS erroneously treated the \$4,519,607.91 balance of the Town's Q1 2020 payroll deposits as a "credit," presumably because it could not attribute such deposits to a Form 941 on file.*

**ANSWER:** The United States admits that an assessment in the amount of \$0.00 was made by the IRS upon based upon the Plaintiff's Form 941, and admits that the IRS therefore viewed Plaintiff's federal tax deposits as overpayments; otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

16. *Without notifying the Town, the IRS initiated a series of transfers totaling \$385,158.65 from the Town's Q1 2020 payroll deposit balance to other taxable periods, creating an artificial deficit.*

**ANSWER:** Admits that the IRS transferred overpayment credits from the first quarter of

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<sup>1</sup> At the end of Q1 2020, there was a \$296.25 shortfall between the Town's assessed payroll tax liability of \$4,519,904.16 and its payroll deposit balance for Q1 2020 of \$4,519,607.91.

**ANSWER:** Admits.

2020 to other periods; otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations.

17. *On April 30, 2020, the IRS erroneously transferred \$113,300 from Q1 2020 to the taxable period ended December 31, 2018 (“Q4 2018”) to pay a civil penalty purportedly attributable to Q4 2018 (the “Q4 2018 Civil Penalty”).*

**ANSWER:** The United States admits that the IRS transferred \$113,300 from the first quarter of 2020 and applied it to civil penalty assessed for tax period ending on December 31, 20218; otherwise denies.

18. *The IRS did not send the Town a Notice of Proposed Penalty for the Q4 2018 Civil Penalty until September 21, 2020, which was nearly five months after it had transferred the \$113,300 credit out of Q1 2020 to pay for it.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

19. *A Notice of Penalty Charge for the Q4 2018 Civil Penalty was not sent to the Town until on or about January 18, 2021, meaning that the Q4 2018 Civil Penalty was not formally assessed against the Town until approximately 9 months after the \$113,300 credit had been transferred from Q1 2020 to pay for it.*

**ANSWER:** Denies.

20. *By failing to provide the Town with notice before transferring \$113,300 from Q1 2020 to pay for the Q4 2018 Civil Penalty, the IRS deprived the Town of its right and opportunity to appeal or seek a waiver of the penalty and/or request further information surrounding the Q4 2018 Civil Penalty.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief

about the truth of the allegations.

21. *Thus, the IRS' transfer of \$113,300 from Q1 2020 to Q4 2018 was unjustified, improper, and erroneous.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

22. *On April 30, 2020, the IRS also transferred \$73,503.34 from Q1 2020 to the taxable period ended December 31, 2019 ("Q4 2019").*

**ANSWER:** The United States admits that the IRS transferred \$73,503.34 from the first quarter of 2020 and applied it to the fourth quarter of 2019; otherwise denies.

23. *The Town's assessed tax liability for Q4 2019 was \$5,247,023.95.*

**ANSWER:** Admits.

24. *The Town deposited \$5,251,944.38 through normal payroll tax deposits during Q4 2019.*

**ANSWER:** Denies. The United States avers that IRS records shows Plaintiff made federal tax deposits in the amounts of \$5,251,944.66 for the fourth quarter of 2019.

25. *This resulted in an overpayment by the Town of \$4,920.43 for its Q4 2019 payroll tax liability.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

26. *In light of the Town's overpayment of its payroll tax liability during the quarter, there was no deficit at the end of Q4 2019.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief

about the truth of the allegations.

27. *Since there was no deficit at the end of Q4 2019, the IRS should not have transferred \$73,503.34 from Q1 2020 to Q4 2019.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

28. *Thus, the IRS' transfer of \$73,503.34 from Q1 2020 to Q4 2019 was unjustified, improper, and erroneous.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

29. *On April 30, 2020, the IRS also transferred \$198,355.31 from Q1 2020 to Q3 2020.*

**ANSWER:** The United States admits that the IRS transferred \$198,355.31 from the first quarter of 2020 and applied it to the third quarter of 2020; otherwise denies.

30. *Q3 2020 had not begun at the time the IRS made this transfer.*

**ANSWER:** Denies.

31. *No payroll tax deposits were due for Q3 2020 at the time the IRS made this transfer.*

**ANSWER:** Denies.

32. *The Town had not made any payroll tax deposits for Q3 2020 at the time the IRS made this transfer.*

**ANSWER:** Denies.

33. *The Town's Q3 2020 Form 941 was not yet due and had not yet been filed by the*

*Town at the time the IRS made this transfer.*

**ANSWER:** Denies.

34. *Thus, the IRS' transfer of \$198,355.31 from Q1 2020 to Q3 2020 was unjustified, improper, and erroneous.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

35. *In sum, the IRS erroneously transferred \$113,300, \$73,503.32, and \$198,355.31 to other taxable periods instead of applying such amounts towards the Town's Q1 2020 \$4,519,904.16 payroll tax liability.*

**ANSWER:** The United States admits it transferred \$113,300, \$73,503.32, and \$198,355.31 from the first quarter of 2020 and applied it to other periods. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

36. *Since the IRS failed to provide the Town with notice in advance, these transfers were improper under law. See Ahmed v. Comm'r of IRS, 3d Cir., No. 22-1091, April 7, 2023.*

**ANSWER:** Denies.

37. *As a result of the IRS' improper transfers, the balance of the Town's Q1 2020 payroll tax deposit account was reduced to \$4,134,449.26.*

**ANSWER:** The United States admits that the deposits made by the Plaintiff for the first quarter of 2020 account was reduced by the transfers made and applied to other periods. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

38. *By making the improper transfers, the IRS created an artificial deficit for Q1*

2020 of \$385,158.65.

**ANSWER:** Denies.

39. *Since all payroll taxes due had been timely deposited during the quarter for Q1 2020, the Town reasonably operated on a good faith basis that its subsequent payments were satisfying the principal balance owed for each respective quarter and avoiding the accrual of additional penalties, interest, and fees.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

40. *The IRS subsequently transferred three interest credits totaling \$10,235.03 from other quarters to the Town's Q1 2020 payroll tax balance, which reduced the artificial deficit to \$374,923.62.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

41. *The IRS then assessed that the Town had failed to pay \$375,219.87 in payroll taxes for Q1 2020, which was comprised of the \$374,923.62 erroneous deficit and the legitimate \$296.25 shortfall previously acknowledged by the Town.*

**ANSWER:** The United States admits that the IRS assessed employment tax in the amount of \$4,519,904.16 for the first quarter of 2020 and at that time there was a balance owed by Plaintiff because of the transfers. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 41.

42. *The IRS subsequently assessed \$13,132 in penalties and \$10,051.96 in interest against the Town on the \$375,219.87, increasing the Town's assessed liability for Q1 2020 to*

\$398,404.53.

**ANSWER:** The United States admits that the IRS assessed a failure to pay penalty in the amount of \$13,132.70, and interest in the amount of \$10,051.96 for the first quarter of 2020. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

43. *An additional \$20,681.49 in penalties and \$382.19 in interest were then assessed by the IRS, bringing the Town's total purported unpaid payroll tax liability for Q1 2020 to \$419,468.21.*

**ANSWER:** The United States admits that the IRS assessed a federal tax deposit penalty in the amount of \$20,681.49, and additional interest in the amount of \$382.19 for the first quarter of 2020. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

44. *Notwithstanding the fact that the Town had timely deposited all payroll taxes due for Q1 2020, with the exception of the legitimate \$296.25 shortfall, the Town continued to receive inaccurate notices reflecting a balance of unpaid taxes, penalties, and interest for Q1 2020.*

**ANSWER:** The United States admits that the IRS notified Plaintiff of the balance due and of penalties assessed for the first quarter of 2020. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

45. *The information provided by the IRS in conjunction with the assessed penalties, interest, and fees was untimely, incomplete, inaccurate, and inconsistent, which made it impossible for the Town to ascertain how or why such amounts were being assessed when all tax*

*due had been timely paid.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

46. *The Town attempted to contact the IRS on numerous occasions to determine why it was continuing to receive inaccurate notices reflecting a balance of unpaid taxes, penalties, and interest for Q1 2020 when it had accurately and timely deposited substantially all tax due, but did not receive a response.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

47. *On September 30, 2022, the Town spoke with IRS agent badge #1003959721 who confirmed that there was a balance due for Q1 2020 of \$423,186.97.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

48. *To avoid being assessed additional penalties and interest, the Town immediately remitted payment in full the same day through the RS' Electronic Federal Tax Payment System.*

**ANSWER:** The United States admits that on September 30, 2022, Plaintiff made a subsequent payment towards the balance owed for the first quarter of 2020 in the amount of \$423,186.97. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

49. *On November 30, 2022 the Town filed a Request for Refund seeking a refund of the \$423,186.97 it paid on September 30, 2022, less the \$296.25 shortfall, and any penalties and interest attributable thereto (the "Q1 2020 Request for Refund").*

**ANSWER:** Denies. The United States avers that on January 3, 2023, the IRS received

from Plaintiff, a Form 843, Claim for Refund and Request for Abatement, seeking a refund in the amount of \$422,890.72 for the first quarter of 2020, with respect to a payment made on September 30, 2022.

50. *To date, the Town has not received a response from the IRS regarding its Request for Refund.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

### **B. The Q4 2020 Claim for Refund**

51. *The Town of Westport's assessed payroll tax liability for Q4 2020 was \$4,760,473.51.*

**ANSWER:** Denies. The United States avers that IRS records show assessments of tax in the amount of \$4,551,512.59 and \$209,582.30 for the fourth quarter of 2020.

52. *During Q4 2020, the Town paid \$4,761,489.70 through normal payroll tax deposits for that respective quarter.*

**ANSWER:** Denies.

53. *The Town timely filed its Q4 2020 Form 941 on February 1, 2021.*

**ANSWER:** Denies. The United States avers that Plaintiff was required to file Form 941 for the fourth quarter of 2020 on or before January 31, 2021. IRS records show that Plaintiff did not file Form 941 until February 16, 2021, the date it was received by IRS.

54. *Due to an administrative error by its then-payroll clerk, the incorrect amounts were entered into the spreadsheet that was used to compile the Q4 2020 Form 941 information.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

55. *As a result, the Town's Q4 2020 Form 941 incorrectly reflected that the Town's payroll tax liability for Q4 2020 was \$4,551,512.59 instead of the correct amount of \$4,760,473.51.*

**ANSWER:** The United States admits that Plaintiff's Form 941 for the fourth quarter of 2020 reports conflicting amount of tax due. Specifically, line 10 reports \$4,551,512.59 while line 12 reports \$4,760,473.51. The United States otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations.

56. *The Town self-identified this error during a review of its accounting reports on March 22, 2021.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

57. *In response, the Town immediately filed a corrective Form 941x on March 29, 2021 to correct the self-identified errors on its original Q4 2020 Form 941.*

**ANSWER:** Denies. The United States avers that Plaintiff filed Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, for the fourth quarter of 2020 on January 11, 2022. Plaintiff's Form 941-X reported additional tax in the amount of \$209,582.31.

58. *The Q4 2020 Form 941x reflected that the Town had inadvertently understated its tax liability on the original Q4 2020 Form 941 by approximately \$209,582.31.*

**ANSWER:** Admits that the Form 941x reported additional tax; otherwise denies.

59. *Notwithstanding that the original Q4 2020 Form 941 inadvertently understated the Town's Q4 2020 payroll tax liability by approximately \$209,582.31, the Town made its payroll deposits for Q4 2020 based on the correct amount (\$4,760,473.51), resulting in payroll deposits during Q4 2020 being made in the amount of \$4,761,489.70.*

**ANSWER:** Denies.

60. *While the Town owed \$4,760,473.51, it paid \$4,761,489.70 during Q4 2020, resulting in an overpayment of approximately \$1,016.19.*

**ANSWER:** Denies.

61. *Notwithstanding the fact that the Town had timely and accurately deposited all payroll taxes due during Q4 2020, on December 3, 2021, the Town received a Notice CP210 reflecting a \$209,323.97 overpayment on its payroll deposit account and erroneously assessing a \$105,699.97 penalty for failure to make a proper tax deposit.*

**ANSWER:** The United States admits that, prior to the assessment of additional taxes, the IRS determined that Plaintiff had an overpayment. The United States further admits that a Notice CP120 dated November 29, 2021 was sent to notify Plaintiff of that overpayment and of the federal tax deposit penalty assessment in the amount of \$105,699.97. Denies any remaining allegations.

62. *On December 29, 2021, the Town responded to the IRS' Notice CP210 by letter, explaining the errors described above and directing the IRS to review the original Form 941 and the amended Form 941x.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

63. *At this point in time, the Town had an overpayment of \$1,016.19 on its payroll deposit account for Q4 2020 and no penalties or interest should have been assessed.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

64. *Since all taxes due for Q4 2020 had been timely paid through regular payroll deposits during the quarter, the Town requested that the IRS waive the erroneously assessed \$105,699.07 penalty.*

**ANSWER:** The United States denies that all taxes due for the fourth quarter of 2020 were timely paid through regular federal tax deposits. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

65. *The IRS did not respond to this request.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

66. *Since the Town had timely paid all payroll taxes due during Q4 2020, it reasonably operated on a good faith basis that its subsequent payments were satisfying the principal balance owed for each respective quarter and avoiding the accrual of additional penalties and interest.*

**ANSWER:** The United States denies that all taxes due for the fourth quarter of 2020 were timely paid through regular federal tax deposits. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

67. *On June 10, 2022, the Town received Notice CP128 reflecting that the erroneous \$105,699.07 penalty was still showing as due per IRS records.*

**ANSWER:** The United States admits that the IRS sent Plaintiff Notice CP128 dated June 13, 2022. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

68. *The Notice CP128 also showed that the IRS had inexplicably transferred in and applied a \$59,790.13 “overpayment” from the taxable period ended December 31, 2019 (“Q4*

2019”) to the \$105,699.07 penalty, reducing the amount purportedly due by the Town for Q4 2020 to \$42,505.73.

**ANSWER:** The United States admits that it applied an overpayment of \$59,790.13 from the fourth quarter of 2019 to the balance owed for the fourth quarter of 2020. The United States further admits that the IRS also applied an overpayment of \$1,626.86 from the third quarter of 2020 and applied it to the balance owed for the fourth quarter of 2020. Together these overpayments reduced the balance owed. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

69. *The Town does not know where the Q4 2019 overpayment credit came from since the Town did not have such a substantial overpayment at the end of Q4 2019.*

**ANSWER:** Lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

70. *The Town does not believe that it was entitled to such an overpayment credit.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

71. *This uncertainty was further obfuscated by numerous interest and other credits attributable to other tax periods that were periodically added and subtracted from the Town’s Q4 2020 payroll tax deposit balance by the IRS.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

72. *The Town attempted to contact the IRS numerous times to determine why it was continuing to receive inaccurate notices reflecting an outstanding balance for Q4 2020 when it*

*had timely paid all taxes due through normal payroll deposits during that quarter but did not receive a response.*

**ANSWER:** The United States denies that Plaintiff timely paid all taxes due for the fourth quarter of 2020 through regular federal tax deposits. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

73. *On September 30, 2022, the Town spoke with IRS agent badge #1003959721 who confirmed that there was a balance due for Q4 2020 of \$43,748.27.*

**ANSWER:** The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations.

74. *To avoid being assessed additional penalties and interest, the Town immediately remitted payment in full the same day through the IRS' Electronic Federal Tax Payment System.*

**ANSWER:** The United States admits that Plaintiff made a payment of \$43,748.27 for the fourth quarter of 2020 on September 20, 2022; otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

75. *On December 23, 2022, the Town filed a Request for Refund seeking a refund of the \$43,748.27 overpayment it made on September 30, 2022 and any penalties and interest attributable thereto (the "Q4 2020 Request for Refund").*

**ANSWER:** Denies. The United States avers that on January 12, 2023, the IRS received from Plaintiff, a Form 843, Claim for Refund and Request for Abatement, seeking a refund in the amount of \$43,748.27 for the fourth quarter of 2020, with respect to payments made on September 30, 2022.

76. *To date, the Town has not received a response from the IRS regarding its Request for Refund.*

**ANSWER:** Admits.

**COUNTERCLAIM**

The Defendant United States of America, pursuant to 26 U.S.C. § 7401, with the authorization of the Secretary of the Treasury and at the direction of the Attorney General, hereby asserts a counterclaim against the Plaintiff Town of Westport, to reduce to judgment any balance due for employment taxes, penalties, and interest created for the fourth quarter of 2020 resulting from the reversal of certain overpayment credits at issue in this case, and for its counterclaim, the Counterclaim Plaintiff United States of America alleges as follows:

77. This counterclaim is brought pursuant to Fed. R. Civ. P. 13. This Court has jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 1340 and 1346(c), and 26 U.S.C. § 7402.

78. Counterclaim Defendant Town of Westport (“Westport”) is a municipal corporation and a political subdivision of the State of Connecticut, created pursuant to the laws of the State of Connecticut.

79. On September 13, 2023, Westport filed a complaint against the United States seeking a refund of \$466,638 for employment taxes (WT-FICA, Form 941), interest, and/or penalties related to payroll tax deposits it claims that the Department of Treasury, Internal Revenue Service, (“IRS”) misapplied for the first and fourth quarters of 2020.

80. Westport was required to file a Form 941 for the first quarter of 2020 on or before April 30, 2020.

81. Westport untimely filed a Form 941 for the first quarter of 2020 on May 7, 2020, but \$0.0 in taxes was initially assessed by the IRS based upon this return.

82. The Form 941 filed by Westport for the first quarter for 2020 had errors and was incomplete.

83. For the first quarter of 2020, Westport made federal tax deposits. The IRS viewed these deposits as creating overpayments and transferred overpayment credits from the employment tax account for the first quarter of 2020 to other periods.

84. The IRS applied the following amounts as overpayments credits from the employment tax (Form 941) account for the first quarter of 2020 to the following taxes and periods:

<b>Amount Transferred</b>	<b>Type of Tax</b>	<b>Tax Period</b>
\$73,503.34	Form 941	December 31, 2019
\$113,300.00	Civil Penalty	December 31, 2018
\$198,355.31	Form 941	September 30, 2020
\$736.65	Form 941 Interest	September 30, 2020
\$2,855.83	Form 941 Interest	September 30, 2020
\$2,596.68	Form 941 Interest	September 30, 2020

85. The IRS subsequently assessed employment taxes in the amount of \$4,519,904.16 for the first quarter of 2020 and, at that time, there was a balance owed by Westport because of the prior transfers. Additional failure to timely deposit penalties may be due for this quarter, depending upon when wages were actually paid and the amounts.

86. Westport was required to file a Form 941 for the fourth quarter of 2020 on or before January 31, 2021.

87. Westport untimely filed a Form 941 for the fourth quarter of 2020 on February 16, 2021.

88. The Form 941 filed by Westport for the fourth quarter of 2020 had errors and was incomplete. Westport's Form 941 for the fourth quarter of 2020 reported conflicting amounts of tax due.

89. On January 11, 2022, Westport filed a Form 941-Z, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, for the fourth quarter of 2020 reporting therein additional tax. Accordingly, the IRS made additional assessments of employment taxes against Westport for the fourth quarter of 2020.

90. For the fourth quarter of 2020, Westport made federal tax deposits, but it did not pay all employment taxes due through timely federal tax deposits; Westport also failed to timely pay its tax debts for the quarter.

91. Prior to the assessment of additional taxes, the IRS assessed a federal tax deposit penalty.

92. The overpayment credit in the amount of \$73,503.34 that was applied to the fourth quarter of 2019 as set forth in paragraph 84, above, was in turn, partially applied to the fourth quarter of 2020 in the following amounts:

<b>Amount Transferred</b>	<b>Type of Tax</b>	<b>Tax Period</b>
\$59,790.13	Form 941	December 31, 2020
\$2,788.90	Form 941 Interest	December 31, 2020

93. Similarly, the overpayment credits that were applied to the third quarter of 2020 as set forth in paragraph 84, above, were in turn, partially applied to the fourth quarter of 2020 in the amount of \$1,626.86.

94. Based upon the complaint of the Plaintiff Town of Westport and a review of administrative record, the United States has requested that the IRS reverse the overpayment credits there were applied from the employment tax account for the first quarter of 2020.

95. The reversal of the overpayment credits will create a balance due for the employment tax account for the fourth quarter of 2020, as well as for other tax periods. This is because, as set forth in paragraphs 92 and 93, above, some of the funds that were initially transferred from the employment tax account for the first quarter of 2020, were in turn, re-transferred to the employment tax account for the fourth quarter of 2020. As such, when the chain of adjustments is reversed, it will create a liability in the amount of the reversed credits for the employment tax account for the fourth quarter of 2020, plus failure to timely file penalties, failure to timely pay penalties, failure to timely deposit penalties, and interest.

96. Pursuant to 26 U.S.C. § 6402(a) and other applicable law, the United States is entitled to apply any overpayment for the employment tax account for the first quarter of 2020 to any other debt, including any debt for the employment taxes, penalties, and interest for the fourth quarter of 2020.

WHEREFORE, the Defendant and Counterclaim Plaintiff United States of America requests the following relief:

A. Judgment against the Plaintiff Town of Westport and in favor of the Defendant United States, finding that there is no refund or credit due for employment taxes, penalties, or interest for the first and fourth quarters of 2020 and, if there is an overpayment created for the

first quarter of 2020 based upon the reversal of credits, apply that overpayment as a credit to any liability of Westport in accordance with 26 U.S.C. § 6402 and other applicable law;

B. Judgment in favor of the Counterclaim Plaintiff United States of America and against the Counterclaim Defendant Town of Westport in the amount of \$64,205.89 for the reversed credits, or such other amount that the Court determines under applicable law, plus late-filing and late-payment penalties under 26 U.S.C. § 6651, penalties for failure to timely make deposit of taxes under 26 U.S.C. § 6656, and interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c), after the reversal of the overpayment credits for the employment tax account for the fourth quarter of 2020; and,

C. Such other and further relief as the Court determines is just and proper.

DAVID A. HUBBERT  
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*/s/ Thelma A. Lizama*  
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**Certificate of Service**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and copies will be sent to those indicated as non-registered participants on February 20, 2024.

/s/ Thelma A. Lizama  
Trial Attorney, Tax Division  
U.S. Department of Justice

**Certificate of Service**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and copies will be sent to those indicated as non-registered participants on December 18, 2023.

/s/ Thelma A. Lizama  
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