

In the United States Court of Federal Claims

No. 20-1254

Filed: December 4, 2023

DOUGHERTY ELECTRIC, INC.,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)

OPINION AND ORDER

SMITH, Senior Judge

Before the Court is defendant’s Motion to Dismiss plaintiff’s Complaint under Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (“RCFC”). For the reasons set forth below, the Court **GRANTS** defendant’s Motion to Dismiss under RCFC 12(b)(1).

I. Factual Background

From 2001 to 2005, Donald Dougherty, Jr. (“Mr. Dougherty”) was the sole shareholder of plaintiff Dougherty Electric, Inc. Complaint at 2, ECF No. 1 [hereinafter Compl.]. In 2007, Mr. Dougherty was charged, *inter alia*, with nine counts of federal tax evasion corresponding to nine calendar quarters between 2003 and 2005. *Id.* In 2008, Mr. Dougherty pleaded guilty to all nine counts of tax evasion, among other counts, and was ordered to pay \$1,633,471.00 in restitution to the Internal Revenue Service (the “IRS”) for underpayment of federal employment taxes by plaintiff, underpayment of personal income taxes by Mr. Dougherty, and interest on those amounts. *Id.* at 3. In December 2008, the IRS informed plaintiff that it intended to assess penalties under section 6663 of the Internal Revenue Code (“I.R.C.”) for seventeen calendar quarters, including the nine at issue in this case. *Id.* On December 11, 2015, plaintiff paid the IRS \$1,534,504.37, including federal employment taxes, penalties, and interest for the nine calendar quarters. *Id.* at 4.

On December 7, 2017, plaintiff submitted a letter to the IRS entitled “Protective Claim for Refund,” stating the following:

The taxpayer is hereby filing a protective refund claim for penalties and interest in the amount of at least \$1,534,504.37 paid on December 11, 2015. This payment was made in connection with a restitution-based assessment following the conviction of the taxpayer's owner for various tax offenses, and included taxes, interest, and fraud penalties. In *Klein v. Commissioner*, 149 T.C. No. 15 (Oct. 3, 2017), the United States Tax Court held that a restitution-based assessment pursuant to 26 U.S.C. § 6201(a)(4) may only be based upon taxes due and owing, and may not include interest or additions-to-tax. The restitution-based assessment in this case must be limited to taxes only, and the taxpayer is therefore entitled to a refund of all interest and penalties paid, or that should have been allocated to interest and penalties, on December 11, 2015. The taxpayer also reserves the right to argue that all interest and penalty assessments were invalid and to seek a refund of an additional amount. The taxpayer therefore files this claim for refund as a protective matter.

Compl., Exhibit ("Ex.") A at 1. On December 11, 2017—four days after plaintiff's first letter to the IRS—the applicable statute of limitations period expired. See I.R.C. § 6511(a).

On April 10, 2018, plaintiff sent a second letter to the IRS, entitled "Modified Protective Claim for Refund," stating the following:

On behalf of the above-referenced taxpayer ("the taxpayer"), this letter relates to the protective claim for refund submitted on December 7, 2017 for tax years 2002, 2003, and 2004 ("Refund Claim") (a copy of which is enclosed).

The taxpayer is filing a modified Refund Claim for penalties and interest in the amount of at least \$1,534,504.37 paid on December 11, 2015. The taxpayer's Refund Claim is hereby modified as follows: in addition to the taxpayer's reliance on *Klein v. Commissioner*, 149 T.C. No. 15 (Oct. 3, 2017), the taxpayer further asserts that the Commissioner failed to comply with the requirements of I.R.C. § 6751(b)(1). See *Graev v. Commissioner*, 149 T.C. 23 (Dec. 20, 2017), supplementing 147 T.C. 16 (Nov. 30, 2016). The taxpayer's Refund Claim is unchanged in all other respects.

Compl., Ex. B at 1.

On June 19, 2018—after plaintiff sent its second letter—the IRS sent plaintiff Letter 3010C stating, in part:

We can't allow your request to remove all of the interest charged on your account for the tax year above. We didn't remove the interest for the following reason:

The interest wasn't an excessive amount, assessed after the expiration of the period of limitation on assessment, or erroneously or illegally assessed.

Defendant's Motion to Dismiss, ECF No. 16 [hereinafter Def.'s MTD], Ex. D at 1. Also on June 19, 2018, the IRS sent plaintiff another letter, Letter 916C, stating, in part:

We can't process your claim for the tax periods listed above because your supporting information was not complete. If you have more information you didn't send with this claim, you can file another claim that includes all of your information.

As for the penalty portion of the protective claim you filed on December 7, 2017, please submit a copy of the restitution order for review so a final determination can be made.

Def.'s MTD, Ex. E at 1.

On August 16, 2018, plaintiff filed Form 843, "Claim for Refund and Request for Abatement," for each of the nine quarters at issue. *See* Compl., Ex. C. On September 28, 2018, the IRS formally denied plaintiff's refund claims. *See* Def.'s MTD, Ex. G. Justifying its denial, the IRS stated the following:

There were no expected changes in current regulations, pending legislation or current litigation relevant to the United States District Court's Judgment dated December 17, 2008 in which it was ordered that criminal monetary penalties restitution of \$1,633,471.00 be made to the IRS. The Judgment of the Court is clear and there is no Statute or Regulation upon which to base your claim.

Id. at 2.

II. Procedural History

On September 23, 2020, plaintiff filed its Complaint with this Court. *See generally* Compl. Specifically, plaintiff seeks "recovery of federal employment tax penalties, plus statutory interest on those amounts, erroneously assessed and paid for the nine quarters ending September 30, 2003; December 31, 2003; March 31, 2004; June 30, 2004; September 30, 2004; December 31, 2004; March 31, 2005; June 30, 2005; and September 30, 2005." *Id.* at 1. On June 21, 2021, defendant filed its Motion to Dismiss the Complaint. *See generally* Def.'s MTD. Specifically, defendant argues that: (1) this Court lacks jurisdiction to hear plaintiff's claim because plaintiff did not file a proper claim for refund; and (2) plaintiff failed to state a claim because the Internal Revenue Code provisions that plaintiff relies on are inapplicable or were not in effect when Mr. Dougherty's restitution was imposed. *Id.* at 8–9, 17. On September 22, 2021, plaintiff filed its Response to Defendant's Motion to Dismiss. *See generally* Plaintiff's Brief in

Opposition to Defendant’s Motion to Dismiss, ECF No. 23 [hereinafter Pl.’s Resp.]. On October 8, 2021, defendant filed its Reply in support of its Motion to Dismiss. *See generally* Reply Brief in Support of Defendant’s Motion to Dismiss, ECF No. 24 [hereinafter Def.’s Reply]. On December 15, 2021, the Court held Oral Argument.

On February 16, 2022, the Court stayed the case until April 22, 2022, and ordered supplemental briefing to discuss the impact of the recent Federal Circuit decision, *Brown v. United States*, 22 F.4th 1008 (Fed. Cir. 2022), on the case. *See* February 16, 2022 Order, ECF No. 35. On May 6, 2022, plaintiff filed its Supplemental Brief in opposition to defendant’s Motion to Dismiss. *See generally* Plaintiff’s Supplemental Memorandum in Further Opposition to Defendant’s Motion to Dismiss, ECF No. 38 [hereinafter Pl.’s Supp. Br.]. On June 14, 2022, defendant filed its Response to Plaintiff’s Supplemental Brief. *See generally* Supplemental Response Brief in Support of Defendant’s Motion to Dismiss, ECF No. 41 [hereinafter Def.’s Resp. to Pl.’s Supp. Br.]. On August 10, 2022, plaintiff filed its Reply in support of its Supplemental Brief. *See generally* Plaintiff’s Supplemental Reply Memorandum in Further Opposition to Defendant’s Motion to Dismiss, ECF No. 48 [hereinafter Pl.’s Supp. Reply]. On June 8, 2023, the Court held Oral Argument on the supplemental briefing. Defendant’s Motion to Dismiss is fully briefed and ripe for review.

III. Standard of Review

Defendant brings its Motion to Dismiss under RCFC 12(b)(1) for lack of subject-matter jurisdiction.¹ *See generally* Def.’s MTD. Whether this Court has subject-matter jurisdiction to hear the merits of a case is a “threshold matter” and a requirement that “springs from the nature and limits of the judicial power of the United States.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94–95 (1998). When evaluating subject-matter jurisdiction, the Court “must accept as true all undisputed facts asserted in the plaintiff’s complaint and draw all reasonable inferences in favor of the plaintiff.” *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011) (citing *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995)). If plaintiff’s claim is challenged for lack of jurisdiction, then plaintiff must demonstrate that it “is properly in court” through “competent proof.” *McNutt v. Gen. Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189 (1936). Plaintiff bears the burden of establishing subject-matter jurisdiction by a preponderance of the evidence. *See Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988) (citing *Zunamon v. Brown*, 418 F.2d 883, 886 (8th Cir. 1969)). If the Court determines, at any time, that it lacks subject-matter jurisdiction, it must dismiss the action. *See* R. Ct. Fed. Cl. 12(h)(3).

IV. Discussion

Defendant argues that the Court lacks subject-matter jurisdiction because plaintiff failed to file a claim for refund to the IRS within the statutory period. *See* Def.’s MTD at 8–16.

¹ Defendant also moves for dismissal pursuant to Rule 12(b)(6) of the Rules of the United States Court of Federal Claims for failure to state a claim. Because the Court concludes that it lacks subject-matter jurisdiction, the Court need not address defendant’s other arguments.

Plaintiff responds that the Court has subject-matter jurisdiction over this case because the variance doctrine applies. *See* Pl.’s Resp. at 11–27.

“The Supreme Court has ruled that failure to file with the IRS within the prescribed time deprives the court of ‘jurisdiction over [the] suit for refund.’” *Dixon v. United States*, 67 F.4th 1156, 1161 (Fed. Cir. 2023) (quoting *United States v. Dalm*, 494 U.S. 596, 608–10 (1990)). However, the substantial variance doctrine “permits consideration of a claim for refund despite failure to timely file detailed formal claims with the IRS when a substantial variance from the requirements of the regulation is not involved.” *Computervision Corp. v. United States*, 445 F.3d 1355, 1364 (Fed. Cir. 2006). However, “this doctrine applies only in four limited situations,” commonly referred to as the informal claim doctrine, the germaneness doctrine, the general claims doctrine, and the waiver doctrine. *Id.* The Court examines the applicability of each in turn.

A. Informal-Claim Doctrine

Defendant argues that plaintiff’s December 7, 2017, letter to the IRS was not an informal claim for refund because it did not fairly apprise the IRS of the basis for the claim. *Id.* at 8–10; Def.’s Reply at 4–8; Def.’s Resp. to Pl.’s Supp. Br at 12–16. Plaintiff responds that its December 7, 2017, letter was a valid informal claim. *See* Pl.’s Resp. at 12–18; Pl.’s Supp. Br. at 7–9; Pl.’s Supp. Reply at 11–15.

“Under the informal-claim doctrine, courts treat ‘a timely claim with purely formal defects [as] permissible if it fairly apprises the IRS of the basis for the claim within the limitations period’ and is followed by ‘an untimely amendment that complied with the regulations.’” *Dixon*, 67 F.4th at 1162 (quoting *Computervision*, 445 F.3d at 1364). The Federal Circuit has specifically held that “an informal refund claim must adequately apprise the IRS of the particular year or years for which a refund is sought.” *Stephens v. United States*, 884 F.3d 1151, 1156 (Fed. Cir. 2018) (citing *Computervision*, 445 F.3d at 1365). “Where the doctrine applies, an untimely formal claim is allowed to relate back, for timeliness purposes, to a timely informal claim.” *Dixon*, 67 F.4th at 1162 (citing *United States v. Kales*, 314 U.S. 186, 190–97 (1941)).

Plaintiff’s December 7, 2017, letter did not identify the “particular year or years for which a refund is sought.” *Stephens*, 884 F.3d at 1156 (citing *Computervision*, 445 F.3d at 1365). The letter identified the amount paid (“at least \$1,534,504.37”), the date paid of the payment (“paid on December 11, 2015”), and the general purpose of the payment (“[the] payment was made in connection with a restitution-based assessment following the conviction of the taxpayer’s owner for various tax offenses, and included taxes, interest, and fraud penalties”). Compl., Ex. A at 2–3. However, nowhere in the letter did plaintiff mention the nine tax quarters from 2003 to 2005 at issue. *See id.* The December 2017 letter also did not mention the type of tax at issue nor the identity or tax identification number of plaintiff’s owner Mr. Dougherty. *Id.*

This Court and the Federal Circuit have found purported informal refund claims inadequate when they have failed to identify the tax years at issue. For example, in *Johnson v. United States*, 127 Fed. Cl. 529 (2016), this Court considered the adequacy of the plaintiff's purported informal claim for refund. The Court in that case found that the plaintiff's claim, a March 6, 2010, letter to IRS, was inadequate because, among other things, it "failed to identify the year or years for which a refund was sought." *Id.* at 535. In *Stephens*, the Federal Circuit affirmed this Court's decision to dismiss the taxpayers' case for failure to submit a timely claim for refund. 884 F.3d at 1156. The Federal Circuit concluded that the petitioners' purported informal claim was inadequate because "[n]owhere in the Stephenses' amended 1997 return or the cover letter accompanying it did the Stephenses adequately apprise the IRS that they were seeking a refund for 1995 or 1996." *Id.* In the instant case, plaintiff's failure to specify the tax years at issue in their December 2017 letter to the IRS is material evidence that the IRS was not adequately apprised of plaintiff's claim.

While not binding on this Court, other Circuits have sometimes suggested that a plaintiff's failure to include tax years in an informal claim for refund is not fatal *in and of itself* to that plaintiff's claim if the claim for refund contains other information to fairly apprise the IRS of the basis of that plaintiff's claim. *See, e.g., Kaffenberger v. United States*, 314 F.3d 944, 955 (8th Cir. 2004) ("Failure to specify the year does not necessarily defeat the informal claim *if other facts suffice to put the IRS on notice of the specified refund sought.*" (emphasis added)); *PALA v. United States*, 234 F.3d 873, 878 (5th Cir. 2000) ("The fact that PALA's letter does not specifically mention the year 1991 is irrelevant; *the IRS had ample notice that the entire determination . . . was the subject of a claim for refund.*" (emphasis added)). However, as noted above, plaintiff failed to include other important information in its December 2017 letter, including the type of tax at issue and sufficient information about Mr. Dougherty's restitution payments, both of which contributed to plaintiff's failure to adequately apprise the IRS of the basis for the claim.

Taken together, the Court concludes that plaintiff's December 7, 2017 letter could not have fairly apprised the IRS of the basis for plaintiff's claim. Indeed, after receiving plaintiff's subsequent letter dated April 10, 2018, the IRS still couldn't process plaintiff's claim: "We can't process your claim for the tax periods listed above because your supporting information was not complete." Def.'s MTD, Ex. E.

B. Other Substantial Variance Doctrines

Plaintiff's action also fails under the remaining three exceptions of the substantial variance doctrine because it did not timely file a formal claim. Under the waiver doctrine, "[i]f the taxpayer *files a timely formal claim* but fails to include the specific claim for relief, the claim may nonetheless be considered timely if the IRS considers that specific claim within the limitations period." *Computervision*, 445 F.3d at 1365 (emphasis added). The general claims doctrine exists "where (1) the taxpayer has *filed a formal general claim within the limitations*

period; and (2) an amendment is filed outside the limitations period that makes the general claim more specific.” *Id.* at 1368 (emphasis added). Finally, the germaneness doctrine

only applies where the taxpayer (1) *files a formal claim within the limitations period* making a specific claim; and (2) after the limitations period but, while the IRS still has jurisdiction over the claim, files a formal amendment raising a new legal theory—not specifically raised in the original claim—that is “germane” to the original claim, that is, it depends upon facts that the IRS examined or should have examined within the statutory period while determining the merits of the original claim.

Id. at 1370 (emphasis added).

These three exceptions of the substantial variance doctrine require one common element: that the taxpayer timely filed a *formal* claim for refund. As demonstrated above, plaintiff’s December 7, 2017 letter was not a timely informal claim for refund, and it certainly was not a timely *formal* claim for refund. Therefore, the waiver, general claims, and germaneness doctrines do not apply in this case. As plaintiff “fail[ed] to file with the IRS within the prescribed time,” *Dixon*, 67 F.4th at 1161, this Court lacks jurisdiction to consider plaintiff’s Complaint.²

V. Conclusion

For the reasons set forth above, defendant’s Motion to Dismiss under RCFC 12(b)(1) is hereby **GRANTED**. The Clerk of Court is directed to enter judgment in favor of defendant, consistent with this opinion.

IT IS SO ORDERED.

s/ *Loren A. Smith*

Loren A. Smith,
Senior Judge

² Plaintiff also argues that, following the Federal Circuit’s decision in *Brown v. United States*, 22 F.4th 1008 (Fed. Cir. 2022), whether plaintiff’s claim was “duly filed” is not a jurisdictional question, but is “more-akin to a claims-processing rule.” Plaintiff’s Supplemental Memorandum in Further Opposition to Defendant’s Motion to Dismiss, ECF No. 38, at 5. However, the Federal Circuit subsequently clarified that “*Dalm*’s jurisdictional characterization applies to ‘the fact of filing’ in the time allowed, but not to § 7422(a)’s ‘duly filed’ requirements governing ‘the adequacy of the filing’ if timely made, and held the latter not to be jurisdictional in nature.” *Dixon v. United States*, 67 F.4th 1156, 1161 (Fed. Cir. 2023) (citing *Brown*, 22 F.4th at 1011–12). This case is about whether a claim for refund was, in fact, filed, not about the “adequacy” of a “timely made” claim. This Court’s conclusion—that the Court lacks subject-matter jurisdiction to hear plaintiff’s case because plaintiff did not file a claim for refund within the statutory period—is consistent with the Federal Circuit’s decisions in *Brown* and *Dixon*.

In the United States Court of Federal Claims

No. 20-1254 T

Filed: December 5, 2023

DOUGHERTY ELECTRIC, INC., *

Plaintiff, *

JUDGMENT

v. *

THE UNITED STATES, *

Defendant. *

Pursuant to the court’s Opinion and Order, filed December 4, 2023, granting defendant’s motion to dismiss,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff’s complaint is dismissed.

Lisa L. Reyes,
Clerk of Court

By: s/ Ashley Reams
Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Effective December 1, 2023, the appeals fee is \$605.00.

In the United States Court of Federal Claims

No. 20-1254

Filed: April 3, 2024

_____)
DOUGHERTY ELECTRIC, INC.,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

ORDER

On December 28, 2023, plaintiff Dougherty Electric, Inc., filed a Motion to Amend the Court’s Judgment entered on December 5, 2023. *See generally* Motion to Amend the Judgment, ECF No. 59; Judgment, ECF No. 57. Specifically, plaintiff requests that the Court enter an order, under Rules 59 and 60 of the Rules of the United States Court of Federal Claims, “reflecting that Plaintiff’s Amended Motion for Leave to File Sur-Reply Brief, (ECF [No.] 27), has been granted[.]” and the arguments therein were rejected. *See id.* at 1; *see generally* Plaintiff’s Amended Motion for Leave to File Sur-reply Brief, ECF No. 27. Plaintiff argues that it is “apparent . . . that this Court considered—and rejected—the argument Plaintiff set forth in its sur-reply” because the Court’s Opinion “cit[ed] the very cases that had not appeared in the parties’ briefing until Plaintiff’s sur-reply.” *See* Plaintiff’s Brief in Support of Motion to Amend Judgment at 4–5, ECF No. 59-1; *see also* Opinion and Order at 6 (citing *Kaffenberger v. United States*, 314 F.3d 944, 955 (8th Cir. 2004); *PALA v. United States*, 234 F.3d 873, 878 (5th Cir. 2000)).

Plaintiff is mistaken. The Court neither granted plaintiff’s Amended Motion for Leave to File a Sur-reply Brief, ECF No. 27, nor relied on arguments or statements made in the proposed sur-reply. As defendant correctly notes in its opposing brief, both *Kaffenberger* and *PALA* are discussed in *Computervision Corp. v. United States*, 445 F.3d 1355, 1364 (Fed. Cir. 2006), which the defendant cited to many times in its initial briefs. *See* Defendant’s Response to Plaintiff’s Motion to Amend the Judgment at 3, ECF No. 60.

For these reasons, plaintiff’s Motion to Amend the Judgment is **DENIED**.

IT IS SO ORDERED.

s/ *Loren A. Smith*

Loren A. Smith,
Senior Judge

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APPEAL,CLOSED,ECF

US Court of Federal Claims
United States Court of Federal Claims (COFC)
CIVIL DOCKET FOR CASE #: 1:20-cv-01254-LAS

DOUGHERTY ELECTRIC, INC. v. USA
Assigned to: Senior Judge Loren A. Smith
Demand: \$401,000
Case in other court: 24-01458
24-01838
Cause: 28:1491 Tucker Act

Date Filed: 09/23/2020
Date Terminated: 12/05/2023
Jury Demand: None
Nature of Suit: 226 Tax - Other
Jurisdiction: U.S. Government Defendant

Plaintiff**DOUGHERTY ELECTRIC, INC.**

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V.

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Date Filed	#	Docket Text
09/23/2020	1	COMPLAINT against USA (TRE) (Filing fee \$400, Receipt number AUSFCC-6471975) (Copy Served Electronically on Department of Justice), filed by DOUGHERTY ELECTRIC, INC.. Answer due by 11/23/2020. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A (Redacted))(ew) (Entered: 09/25/2020)
09/23/2020	2	NOTICE of Assignment to Senior Judge Loren A. Smith. (ew) (Entered: 09/25/2020)

Appx0011

09/23/2020	3	NOTICE of Designation of Electronic Case. (ew) (Entered: 09/25/2020)
09/23/2020	4	MOTION to Seal Exhibits, filed by DOUGHERTY ELECTRIC, INC.. Service: 9/23/2020. Response due by 10/7/2020. (ew) (Entered: 09/25/2020)
09/23/2020	5	Rule 7.1 Disclosure Statement, filed by DOUGHERTY ELECTRIC, INC.. Service: 9/23/2020.(ew) (Entered: 09/25/2020)
09/29/2020	6	ORDER granting 4 Motion to Seal Exhibits to 1 Complaint. Signed by Senior Judge Loren A. Smith. (mr) Service on parties made. (Entered: 09/29/2020)
10/14/2020	7	NOTICE of Appearance by Jason S. Selmont for USA . (Selmont, Jason) (Entered: 10/14/2020)
11/20/2020	8	Unopposed MOTION for Extension of Time until 1/22/2021 to File Answer re 1 Complaint, , filed by USA. Response due by 12/4/2020. (Selmont, Jason) (Entered: 11/20/2020)
11/20/2020	9	ORDER granting 8 Motion for Extension of Time to Answer. Answer due by 1/22/2021. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 11/20/2020)
01/21/2021	10	Unopposed MOTION for Extension of Time until 3/23/2021 to File Answer re 1 Complaint, , filed by USA. Response due by 2/4/2021. (Selmont, Jason) (Entered: 01/21/2021)
01/21/2021	11	ORDER granting 10 Motion for Extension of Time to Answer. Answer due by 3/23/2021. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 01/21/2021)
03/18/2021	12	Unopposed MOTION for Extension of Time until 5/21/2021 to File Answer re 1 Complaint, , filed by USA. Response due by 4/1/2021. (Selmont, Jason) (Entered: 03/18/2021)
03/22/2021	13	ORDER granting 12 Motion for Extension of Time to Answer. Answer due by 5/21/2021. Signed by Senior Judge Loren A. Smith. (nec) Service on parties made. (Entered: 03/22/2021)
05/17/2021	14	Unopposed MOTION for Extension of Time until 6/18/2021 to File Answer re 1 Complaint, , filed by USA. Response due by 6/1/2021. (Selmont, Jason) (Entered: 05/17/2021)
05/18/2021	15	ORDER granting 14 Motion for Extension of Time to Answer. Answer due by 6/18/2021. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 05/18/2021)
06/21/2021	16	MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA. Response due by 7/19/2021. (Attachments: # 1 Exhibit Declaration and Defendant's Exhibits A-P)(Selmont, Jason) (Entered: 06/21/2021)
07/14/2021	17	Joint MOTION for Extension of Time until August 18, 2021 to Response to Motion to Dismiss <i>and Reply Brief</i> , filed by DOUGHERTY ELECTRIC, INC.. Response due by 7/28/2021. (Comisky, Ian) (Entered: 07/14/2021)
07/15/2021	18	ORDER granting 17 Motion for Extension of Time. Plaintiff's Response to defendant's Motion to Dismiss due by 8/18/21. Defendant's Reply to plaintiff's Response due by 9/15/21. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 07/15/2021)

08/10/2021	19	Joint MOTION for Extension of Time to File Response as to 16 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by DOUGHERTY ELECTRIC, INC.. Response due by 8/24/2021. (Comisky, Ian) (Entered: 08/10/2021)
08/11/2021	20	ORDER granting 19 Motion for Enlargement of Time. Plaintiff's Response due by 9/15/21. Defendant's Reply due by 10/08/21. Signed by Senior Judge Loren A. Smith. (eas) Service on parties made. (Entered: 08/11/2021)
09/09/2021	21	Unopposed MOTION for Extension of Time to File Response as to 16 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by DOUGHERTY ELECTRIC, INC.. Response due by 9/23/2021. (Comisky, Ian) (Entered: 09/09/2021)
09/09/2021	22	ORDER granting 21 Motion for Enlargement of Time. Plaintiff's Response due by 9/22/21. Defendant's Reply due by 10/08/21. Signed by Senior Judge Loren A. Smith. (eas) Service on parties made. (Entered: 09/09/2021)
09/22/2021	23	RESPONSE to 16 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by DOUGHERTY ELECTRIC, INC.. Reply due by 10/6/2021. (Attachments: # 1 Exhibit Declaration and Plaintiff's Exhibits A - E)(Comisky, Ian) (Entered: 09/22/2021)
10/08/2021	24	REPLY to Response to Motion re 16 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by USA. (Selmont, Jason) (Entered: 10/08/2021)
10/22/2021	25	MOTION for Oral Argument re 16 MOTION to Dismiss pursuant to Rules 12 (b)(1) and (6) , filed by DOUGHERTY ELECTRIC, INC.. Response due by 11/5/2021. (Comisky, Ian) (Entered: 10/22/2021)
10/22/2021	26	MOTION for Leave to File Sur-Reply Brief , filed by DOUGHERTY ELECTRIC, INC.. Response due by 11/5/2021. (Attachments: # 1 Exhibit Proposed Sur-Reply Brief) (Comisky, Ian) (Entered: 10/22/2021)
11/17/2021		ORDER granting 25 Motion for Oral Argument: Oral Argument set for 11/19/2021 2:00 PM EST in Chambers (Telephonic) before Senior Judge Loren A. Smith. Signed by Senior Judge Loren A. Smith. (eas) Service on parties made. (Entered: 11/17/2021)
12/06/2021		ORDER Cancelling Oral Argument: (11/19/2021 Oral Argument) . ORDER Setting Oral Argument: Oral Argument set for 12/15/2021 at 03:00 PM EST in Chambers (Telephonic) before Senior Judge Loren A. Smith. Signed by Senior Judge Loren A. Smith. (eas) Service on parties made. (Entered: 12/06/2021)
12/14/2021	27	Amended MOTION for Leave to File Sur-reply brief , filed by DOUGHERTY ELECTRIC, INC.. Response due by 12/28/2021. (Attachments: # 1 Exhibit Proposed sur-reply brief)(Lee, Matthew) (Entered: 12/14/2021)
12/15/2021		Minute Entry - Was the proceeding sealed to the public? Yes. Proceeding held in Washington, DC 12/15/2021 through 12/15/2021 before Senior Judge Loren A. Smith: Oral Argument. [Total number of days of proceeding: 1] Approximate duration of proceeding: 1 hour and 30 minutes. Official record of proceeding taken by court reporter. To order a certified transcript or an audio recording of the proceeding, click HERE .(eas) (Entered: 12/15/2021)
12/16/2021	28	STATUS CONFERENCE ORDER: Status Conference set for 2/1/2022 04:00 PM EST in Chambers (Telephonic) before Senior Judge Loren A. Smith. Signed by Senior Judge Loren A. Smith. (eas) Service on parties made. (Entered: 12/16/2021)
12/21/2021	29	RESPONSE to 27 Amended MOTION for Leave to File Sur-reply brief , filed by USA. Reply due by 12/28/2021. (Selmont, Jason) (Entered: 12/21/2021)

12/27/2021	30	Unopposed MOTION for Extension of Time to File Reply as to 27 Amended MOTION for Leave to File Sur-reply brief , filed by DOUGHERTY ELECTRIC, INC.. Response due by 1/10/2022. (Lee, Matthew) (Entered: 12/27/2021)
01/05/2022	31	REPLY to Response to Motion re 27 Amended MOTION for Leave to File Sur-reply brief , filed by DOUGHERTY ELECTRIC, INC.. (Lee, Matthew) (Entered: 01/05/2022)
01/05/2022	32	ORDER granting 30 Unopposed MOTION for Extension of Time to File Reply as to 27 Amended MOTION for Leave to File Sur-reply brief. Plaintiff's Reply due by 1/5/2022. Signed by Senior Judge Loren A. Smith. (eas) Service on parties made. (Entered: 01/05/2022)
01/11/2022	33	Notice of Filing of Certified Transcript for proceedings held on December 15, 2021 in Washington, D.C. (ew) (Entered: 01/11/2022)
01/11/2022	34	**SEALED** TRANSCRIPT of Proceedings held on December 15, 2021 before Judge Loren A. Smith. Total No. of Pages: 1-55.For parties in the case only, to order a copy of the transcript, click HERE . (ew) (Entered: 01/11/2022)
02/07/2022		ORDER Cancelling Status Conference: (02/01/2022 Status Conference) . ORDER Setting Status Conference: Status Conference set for 02/16/2022 at 02:00 PM EST in Chambers (Telephonic) before Senior Judge Loren A. Smith. Signed by Senior Judge Loren A. Smith. (eas) Service on parties made. (Entered: 02/07/2022)
02/16/2022		Minute Entry - Was the proceeding sealed to the public? Yes. If Yes, only parties to the case may order a copy of the transcript. Proceeding held in Washington, DC 2/16/2022 through 2/16/2022 before Senior Judge Loren A. Smith: Status Conference. [Total number of days of proceeding: 1] Approximate duration of proceeding: 30 minutes. Official record of proceeding taken by court reporter. To order a certified transcript or an audio recording of the proceeding, click HERE .(eas) (Entered: 02/16/2022)
02/16/2022	35	ORDER STAYING CASE. Plaintiff's Supplemental Brief due by 4/22/22. Defendant's Response due by 5/23/22. Plaintiff's optional Reply due by 6/6/22. Signed by Senior Judge Loren A. Smith. (eas) Service on parties made. (Entered: 02/16/2022)
04/20/2022	36	Unopposed MOTION for Extension of Time until May 6, 2022 to Filing of Supplemental Brief , filed by DOUGHERTY ELECTRIC, INC.. Response due by 5/4/2022. (Comisky, Ian) (Entered: 04/20/2022)
04/21/2022	37	ORDER granting 36 Motion for Extension of Time. Plaintiff's Supplemental Brief due by 5/6/2022. Defendant's Supplemental Brief due by 6/6/2022. Plaintiff's Reply due by 6/20/2022. Signed by Senior Judge Loren A. Smith. (eas) Service on parties made. (Entered: 04/21/2022)
05/06/2022	38	SUPPLEMENTAL BRIEF re: 16 Motion to Dismiss - Rules 12(b)(1) and (6) , filed by DOUGHERTY ELECTRIC, INC.. (Comisky, Ian) (Entered: 05/06/2022)
06/02/2022	39	Unopposed MOTION for Extension of Time until 6/14/2022 to File Response as to 38 Supplemental Brief , filed by USA. Response due by 6/16/2022. (Selmont, Jason) (Entered: 06/02/2022)
06/07/2022	40	ORDER granting 39 Motion for Enlargement of Time. Defendant's Supplemental Response due by 6/14/2022. Plaintiff's Supplemental Reply due by 6/30/2022. Signed by Senior Judge Loren A. Smith. (ah) Service on parties made. (Entered: 06/07/2022)
06/14/2022	41	RESPONSE to 38 Supplemental Brief , filed by USA. (Selmont, Jason) (Entered: 06/14/2022)

06/27/2022	42	Unopposed MOTION for Extension of Time to File Reply , filed by DOUGHERTY ELECTRIC, INC.. Response due by 7/11/2022. (Comisky, Ian) (Entered: 06/27/2022)
06/28/2022	43	ORDER granting 42 Motion for Enlargement of Time. Plaintiff's Supplemental Reply due by 7/15/2022. Signed by Senior Judge Loren A. Smith. (ah) Service on parties made. (Entered: 06/28/2022)
07/12/2022	44	Unopposed MOTION for Extension of Time to File Reply , filed by DOUGHERTY ELECTRIC, INC.. Response due by 7/26/2022. (Comisky, Ian) (Entered: 07/12/2022)
07/14/2022	45	ORDER granting 44 Motion for Enlargement of Time. Plaintiff's Supplemental Reply due by 7/29/2022. Signed by Senior Judge Loren A. Smith. (ah) Service on parties made. (Entered: 07/14/2022)
07/26/2022	46	Unopposed MOTION for Extension of Time to File Reply , filed by DOUGHERTY ELECTRIC, INC.. Response due by 8/9/2022. (Comisky, Ian) (Entered: 07/26/2022)
07/27/2022	47	ORDER granting 46 Motion for Extension of Time to File Supplemental Reply. Supplemental Reply brief due by 8/10/2022. Signed by Senior Judge Loren A. Smith. (cew) Service on parties made. (Entered: 07/27/2022)
08/10/2022	48	REPLY to Response to 38 Supplemental Brief , filed by DOUGHERTY ELECTRIC, INC.. (Comisky, Ian) (Entered: 08/10/2022)
04/07/2023		SCHEDULING ORDER: Oral Argument set for 5/10/2023 at 2:00 PM EDT in Washington, D.C. Signed by Senior Judge Loren A. Smith. (nck) Service on parties made. (Entered: 04/07/2023)
05/04/2023	49	**ENTERED IN ERROR** ORDER TRANSFERRING CASE to Senior Judge Bohdan A. Futey. Signed by Senior Judge Loren A. Smith. (nek) Service on parties made. Modified on 5/8/2023 to indicate order was entered in error. (dls) (Entered: 05/04/2023)
05/09/2023		ORDER Cancelling Oral Argument: 2:00 PM EDT Oral Argument on 5/10/2023. ORDER Setting Oral Argument: Oral Argument set for 6/8/2023 at 2:00 PM EDT in Courtroom before Senior Judge Loren A. Smith. Signed by Senior Judge Loren A. Smith. (msh) Service on parties made. (Entered: 05/09/2023)
06/05/2023	51	NOTICE of Additional Authority , filed by DOUGHERTY ELECTRIC, INC.. (Comisky, Ian) (Entered: 06/05/2023)
06/05/2023		Scheduled Proceeding Hearing Set: PROCEEDING SEALED. REPORTER PRESENT. Oral Argument set for 6/8/2023 02:00 PM in Courtroom 6 before Senior Judge Loren A. Smith. (fm) (Entered: 06/05/2023)
06/08/2023		Minute Entry - Was the proceeding sealed to the public? Yes. If Yes, only parties to the case may order a copy of the transcript. Proceeding held in Washington, D.C. 6/8/2023 before Senior Judge Loren A. Smith: Oral Argument. [Total number of days of proceeding: 1]. Official record of proceeding taken by court reporter. To order a certified transcript or an audio recording of the proceeding, click HERE .(msh) (Entered: 06/08/2023)
06/23/2023	52	Notice of Filing Certified Transcript for proceedings held on June 8, 2023 in Washington, D.C. (ew) (Entered: 06/23/2023)
06/23/2023	53	**SEALED** CERTIFIED TRANSCRIPT of Proceedings held on June 8, 2023 before Judge Loren A. Smith. Total No. of Pages: 1-32.To the parties in the case only: to order a copy of the transcript, click HERE ; and Release of Transcript Restriction set for 9/18/2023. (ew) (Entered: 06/23/2023)
06/27/2023	54	SUPPLEMENTAL BRIEF re: 16 Motion to Dismiss - Rules 12(b)(1) and (6) , filed by

		DOUGHERTY ELECTRIC, INC.. (Comisky, Ian) (Entered: 06/27/2023)
06/27/2023	55	MOTION to Seal Document 54 Supplemental Brief , filed by DOUGHERTY ELECTRIC, INC.. Response due by 7/11/2023. (Comisky, Ian) (Entered: 06/27/2023)
12/04/2023	56	OPINION and ORDER granting 16 Defendant's Motion to Dismiss. The Clerk is directed to enter judgment. Signed by Senior Judge Loren A. Smith. (nck) Service on parties made. (Entered: 12/04/2023)
12/05/2023	57	JUDGMENT entered pursuant to Rule 58, that plaintiff's complaint is dismissed. (Service on parties made.) (ar) (Entered: 12/05/2023)
12/07/2023	58	ORDER finding as moot 55 Plaintiff's Motion to Seal. Signed by Senior Judge Loren A. Smith. (nck) Service on parties made. (Entered: 12/07/2023)
12/28/2023	59	MOTION to Amend/Correct 57 Judgment , filed by DOUGHERTY ELECTRIC, INC.. Response due by 1/11/2024. (Attachments: # 1 Exhibit Memorandum of Law) (Comisky, Ian) (Entered: 12/28/2023)
01/05/2024	60	RESPONSE to 59 MOTION to Amend/Correct 57 Judgment , filed by USA. Reply due by 1/12/2024. (Selmont, Jason) (Entered: 01/05/2024)
01/09/2024	61	NOTICE, filed by DOUGHERTY ELECTRIC, INC. re 59 MOTION to Amend/Correct 57 Judgment . (Comisky, Ian) (Entered: 01/09/2024)
01/12/2024	62	REPLY to Response to Motion re 59 MOTION to Amend/Correct 57 Judgment , filed by DOUGHERTY ELECTRIC, INC.. (Comisky, Ian) (Entered: 01/12/2024)
02/01/2024	63	NOTICE OF APPEAL, filed by DOUGHERTY ELECTRIC, INC.. Filing fee \$ 605, receipt number AUSFCC-9319199. Copy to CAFC. (Comisky, Ian) (Entered: 02/01/2024)
02/01/2024		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals for the Federal Circuit re 63 Notice of Appeal. (ac7) (Entered: 02/01/2024)
02/09/2024		CAFC Case Number 2024-1458 for 63 Notice of Appeal filed by DOUGHERTY ELECTRIC, INC. (ac7) (Entered: 02/09/2024)
02/09/2024	64	Court of Appeals for the Federal Circuit ORDER: re 63 Notice of Appeal filed by DOUGHERTY ELECTRIC, INC. ORDERED that the appeal be, and it hereby is, DEACTIVATED. (Attachments: # 1 Letter to the Clerk)(ac7) (Entered: 02/09/2024)
04/03/2024	65	ORDER denying 59 Plaintiff's Motion to Amend/Correct Judgment. Signed by Senior Judge Loren A. Smith. (ajd) Service on parties made. (Entered: 04/03/2024)
05/12/2024	66	AMENDED NOTICE OF APPEAL, filed by DOUGHERTY ELECTRIC, INC.. Filing fee \$ 605, receipt number AUSFCC-9558595. Copy to CAFC. (Comisky, Ian) (Entered: 05/12/2024)
05/12/2024		Transmission of Amended Notice of Appeal and Docket Sheet to US Court of Appeals for the Federal Circuit re 66 Amended Notice of Appeal. (ac7) (Entered: 05/22/2024)
05/30/2024		CAFC Case Number 2024-1838 for 66 Amended Notice of Appeal filed by DOUGHERTY ELECTRIC, INC. (ac7) (Entered: 05/30/2024)
05/30/2024	67	Court of Appeals for the Federal Circuit ORDER re 64 Appeal No. 2024-1458 is reactivated and consolidated with Appeal No. 2024-1838. (ac7) (Entered: 05/30/2024)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUGHERTY ELECTRIC INC.,)	
)	
Plaintiff,	)	Civil Action No. <u>20-1254 T</u>
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant)	

COMPLAINT

Plaintiff Dougherty Electric Inc., by and through its undersigned attorneys, states and alleges as follows:

NATURE OF ACTION

1. In this action, Plaintiff seeks recovery of federal employment tax penalties, plus statutory interest on those amounts, erroneously assessed and paid for the nine quarters ending September 30, 2003; December 31, 2003; March 31, 2004; June 30, 2004; September 30, 2004; December 31, 2004; March 31, 2005; June 30, 2005; and September 30, 2005.

2. The Internal Revenue Service (“IRS”), an agency of defendant United States of America, received payments of tax penalties in excess of what was, in fact, owed by Plaintiff for the nine quarters at issue in this action.

PARTIES, JURISDICTION, AND VENUE

3. Plaintiff has its principal place of business at 1900 Arch Street, Suite 101, Philadelphia, Pennsylvania 19103.

4. Defendant is the United States of America.

5. This action arises under the Internal Revenue Code (the “I.R.C.”) for the recovery of tax penalties paid by Plaintiff for the nine calendar quarters at issue, pursuant to I.R.C. §§ 6532 and 7422.

6. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1346(a)(1) and 1491.

7. Plaintiff has made no transfer or assignment of these claims or any part thereof and at all times has been the sole and absolute owner of such claims. No action with respect to these claims has been taken before the Congress of the United States or before any department or agency of the United States other than action before the Treasury Department, as hereinafter described. No other suit or process by Plaintiff, or any assignee, is pending on such claims in any other court.

8. Venue is proper in this Court.

STATEMENT OF FACTS

9. During the calendar years 2001 through 2005, Donald Dougherty Jr. (“Mr. Dougherty”) was the sole shareholder of Plaintiff.

10. During the calendar years 2001 through 2005, Plaintiff, whose address at the time was 142-50 Morris Street, Philadelphia, Pennsylvania, timely filed Forms 941, Employer’s Quarterly Federal Tax Return, with the Internal Revenue Service Center in Philadelphia, Pennsylvania.

11. The IRS subsequently alleged that Plaintiff underreported and underpaid its obligations for federal employment taxes for a total of 17 calendar quarters in 2001, 2002, 2003, 2004, and 2005, including the nine calendar quarters at issue in this case.

12. In 2007, Mr. Dougherty was indicted by a federal grand jury in the Eastern District of Pennsylvania and charged with tax evasion for each of the nine quarters at issue, among other charges. *See United States v. Donald Dougherty, Jr.*, Criminal No. 07-361-1 (E.D. Pa.).

13. In December 2008, Mr. Dougherty entered a plea of guilty as to the nine counts of tax evasion for each quarter at issue here as well as to other charges in the indictment. As part of his plea agreement, Mr. Dougherty was ordered to pay restitution to the IRS in the amount of \$1,633,471.00.

14. The restitution amount of \$1,633,471.00 consisted of federal employment taxes underpaid by Plaintiff, personal income taxes underpaid by Mr. Dougherty, and interest on certain of those amounts.

15. On or about December 17, 2008, the IRS concluded a civil tax examination of Plaintiff and determined the amounts of underpaid federal employment taxes for 17 calendar quarters, including the nine calendar quarters at issue here.

16. On or about December 17, 2008, the IRS communicated to Plaintiff its determination to assess penalties under I.R.C. § 6663 for 17 calendar quarters, including the nine calendar quarters at issue here.

17. The amounts of underpaid federal employment taxes, and penalties under I.R.C. § 6663, for the nine calendar quarters at issue are as follows:

<u>Calendar quarter ending</u>	<u>Federal employment tax</u>	<u>Penalty I.R.C. § 6663</u>	<u>Total Assessment for quarter</u>
September 30, 2003	\$50,817.00	\$38,113.00	\$88,930.00
December 31, 2003	\$101,406.00	\$76,054.50	\$177,460.50
March 31, 2004	\$34,317.00	\$25,738.00	\$60,055.00
June 30, 2004	\$67,329.00	\$50,497.00	\$117,826.00
September 30, 2004	\$67,175.00	\$50,381.00	\$117,556.00
December 31, 2004	\$68,062.00	\$51,047.00	\$119,109.00
March 31, 2005	\$37,755.00	\$28,316.00	\$66,071.00
June 30, 2005	\$38,055.00	\$28,541.00	\$66,596.00
September 30, 2005	\$69,457.00	\$52,092.00	\$121,549.00
Totals	\$534,373.00	\$400,779.50	\$935,152.50

18. In 2010, the IRS assessed the 75 percent civil fraud penalty pursuant to I.R.C. § 6663 on underpayments of federal employment taxes for 17 calendar quarters, including the nine calendar quarters at issue.

19. The penalties under I.R.C. § 6663 for the nine calendar quarters at issue were not approved in writing by a manager before the IRS communicated its determination to the Plaintiff, as required under I.R.C. § 6751(b)(1).

20. With respect to six of the nine quarters at issue – specifically the quarters ending September 30, 2003; December 31, 2003; March 31, 2004; June 30, 2004; September 30, 2004; and December 31, 2004; the IRS obtained supervisory approval no earlier than August 2008.

21. With respect to the remaining three quarters at issue – specifically the quarters ending March 31, 2005; June 30, 2005; and September 30, 2005; the IRS failed to obtain supervisory approval.

22. Because federal employment taxes were at issue, the IRS appears to have assessed penalties under an inapplicable provision of the Internal Revenue Code.

23. On December 11, 2015, Plaintiff paid \$1,534,504.37, representing federal employment taxes, penalties pursuant to I.R.C. § 6663, and interest on these amounts, for the nine quarters at issue in the following amounts:

<u>Quarter ending</u>	<u>Federal employment tax</u>	<u>Penalty I.R.C. 6663</u>	<u>Interest</u>	<u>Total payment for the quarter</u>
September 30, 2003	\$50,817.00	\$38,113.00	\$21,316.19	\$110,246.19
December 31, 2003	\$101,406.00	\$76,054.50	\$131,171.57	\$308,632.07
March 31, 2004	\$34,317.00	\$25,738.00	\$51,766.42	\$111,821.42
June 30, 2004	\$67,329.00	\$50,497.00	\$99,204.25	\$217,030.25
September 30, 2004	\$67,175.00	\$50,381.00	\$96,812.34	\$214,368.34
December 31, 2004	\$68,062.00	\$51,047.00	\$95,587.57	\$214,696.57
March 31, 2005	\$37,755.00	\$28,316.00	\$51,606.67	\$117,677.67
June 30, 2005	\$38,055.00	\$28,541.00	\$50,379.38	\$116,975.38
September 30, 2005	\$69,457.00	\$52,092.00	\$1,507.48	\$123,056.48
Totals	\$534,373.00	\$400,779.50	\$599,351.87	\$1,534,504.37

A. Plaintiff's Protective Claims for Refund

24. On or about December 7, 2017, Plaintiff timely filed protective claims for refund for the nine quarters at issue (the "Protective Refund Claims") (attached hereto as Exhibit A).

25. The Protective Refund Claims were sent to the Internal Revenue Service Center in Cincinnati, Ohio, by certified mail.

26. The Protective Refund Claims sought a refund of \$1,534,504.37 (plus statutory interest) for erroneously assessed and paid penalties pursuant to I.R.C. § 6663 and interest on these amounts for the nine calendar quarters at issue.

27. The Protective Refund Claims contended that the IRS erroneously assessed penalties and interest on those amounts because it improperly relied on the Mr. Dougherty's restitution order in making its assessments.

B. Plaintiff's Modified Protective Claims for Refund

28. On or about April 10, 2018, Plaintiff filed a modification to the Protective Refund Claims for the nine quarters at issue (the "Modified Protective Refund Claims") (attached hereto as Exhibit B).

29. The Modified Protective Refund Claims were sent to the Internal Revenue Service Center in Cincinnati, Ohio, by certified mail.

30. The Modified Protective Refund Claims sought a refund of \$1,534,504.37 (plus statutory interest) for erroneously assessed and paid penalties pursuant to I.R.C. § 6663 and interest on these amounts for the nine quarters at issue.

31. The Modified Protective Refund Claims, like the original Protective Refund Claim, contended that the IRS erroneously assessed penalties and interest on those amounts because it improperly relied on Mr. Dougherty's restitution order in making its assessments and further contended that the assessments violated IRS penalty imposition procedures.

C. Plaintiff's Formal Claims for Refund

32. On or about June 19, 2018, the IRS sent the Plaintiff a Letter 916C.

33. The Letter 916C requested a copy of Donald Dougherty, Jr.'s restitution order so that the IRS could review Plaintiff's refund claims for amounts paid as penalties.

34. In addition, the Letter 916C requested that Plaintiff submit Forms 843 for each of the quarters at issue.

35. On or about July 18, 2018, Plaintiff provided the IRS with a copy of Mr. Dougherty's restitution order.

36. On or about August 16, 2018, at the request of the IRS, Plaintiff filed Forms 843, Claim for Refund and Request for Abatement, for each of the nine quarters at issue (the “Formal Refund Claims”) (attached hereto as Exhibit C).

37. The sum of the nine refunds sought pursuant to the Formal Refund Claims was \$1,534,504.37 (plus statutory interest) for erroneously-assessed penalties pursuant to I.R.C. § 6663 and interest on those amounts for the nine quarters at issue.

38. On or about September 28, 2018, the IRS disallowed in their entirety the Formal Refund Claims for the nine quarters at issue.

39. On or about October 23, 2018, Plaintiff filed a formal protest of the IRS disallowance of its Formal Refund Claims and requested a conference with the IRS Independent Office of Appeals.

D. Plaintiff’s Appeals Conference

40. On or about June 12, 2020, the IRS Independent Office of Appeals requested additional information from Plaintiff. Specifically, the IRS Independent Office of Appeals requested that Plaintiff provide a breakdown of Mr. Dougherty’s restitution order of \$1,633,471 for federal employment taxes, penalties pursuant to I.R.C. § 6663, and interest.

41. After the IRS Independent Office of Appeals requested this additional information, Plaintiff was able to review documents provided by the IRS in response to a Freedom of Information Act request (the “FOIA documents”). In a Freedom of Information Act request, Plaintiff requested the IRS’s examination file for the nine quarters at issue.

42. On or about August 7, 2020, Plaintiff provided the IRS Independent Office of Appeals with the requested breakdown of Mr. Dougherty’s restitution order, which showed that the restitution order did not include any amounts for penalties pursuant to I.R.C. § 6663.

43. Plaintiff also provided the IRS Independent Office of Appeals with the FOIA documents that demonstrated that the IRS had not obtained supervisory approval as required under I.R.C. § 6751(b)(1) before communicating in writing its determination to assess the I.R.C. § 6663 penalties for the nine calendar quarters at issue.

44. The IRS Independent Office of Appeals refused to consider the information contained in the FOIA documents.

APPLICABLE LEGAL PRINCIPLES

45. In *Klein v. Commissioner*, 149 T.C. No. 15 (2017), the Tax Court held that a restitution-based assessment made pursuant to I.R.C. § 6201(a)(4) was limited to the taxes due and owing and could not include interest or additions to tax.

46. Pursuant to I.R.C. § 6751(b)(1), no penalty shall be assessed unless the initial determination of the assessment is personally approved in writing by the immediate supervisor of the individual making the determination or such higher level official as the Secretary may designate.

47. Written approval of the initial penalty determination under I.R.C. § 6751(b)(1) must be obtained before the date when the taxpayer is first sent written notification of the penalties proposed. *Belair Woods, LLC v. Commissioner*, 154 T.C. No.1 (2020); *Oropeza v. Commissioner*, TCM 2020-11 (2020).

48. The supervisory-approval requirement under I.R.C. § 6751(b)(1) applies to the civil fraud penalty pursuant to I.R.C. § 6663. *See, e.g., Minemyer v. Commissioner*, T.C. Memo. 2020-99.

49. Mr. Dougherty's guilty plea to tax evasion charges in violation of I.R.C. § 7201 did not relieve the IRS of its obligation to either follow the limitations on restitution-based

assessments or to secure timely supervisory approval for the assessment of the penalties pursuant to I.R.C. § 6663.

50. The IRS made its initial determination to assess the penalties pursuant to I.R.C. § 6663 for the nine quarters at issue in 2008.

51. The IRS communicated its determination in writing to Plaintiff in 2008.

52. In August 2009, the IRS obtained supervisory approval for the penalties assessed pursuant to I.R.C. § 6663 for the six quarters at issue ending September 30, 2003; December 31, 2003; March 31, 2004; June 30, 2004; September 30, 2004; and December 31, 2004.

53. The IRS did not obtain supervisory approval for the penalties assessed pursuant to I.R.C. § 6663 for the three quarters at issue ending March 31, 2005; June 30, 2005; and September 30, 2005.

54. Because the IRS failed to comply with I.R.C. § 6751(b)(1), its assessment of penalties pursuant to I.R.C. § 6663 for the nine quarters at issue was improper.

COUNT ONE

(Claim for Refund – \$38,113.00 for Form 941 Quarter ending September 30, 2003)

55. Plaintiff repeats and incorporates each of the foregoing allegations as if fully set forth herein.

56. Plaintiff's Protective Refund Claims, Modified Protective Refund Claims, and Formal Refund Claims sought a refund in the amount of \$1,534,504.37 (plus statutory interest) for the nine quarters at issue, including a refund of \$38,113.00 for the penalty pursuant to I.R.C. § 6663 for the calendar quarter ending September 30, 2003.

57. Plaintiff's Protective Refund Claims were timely filed.

58. Plaintiff's Modified Refund Claims were timely filed while the IRS was considering the Protective Refund Claims.

59. Plaintiff's Formal Refund Claims properly perfected the Protective Refund Claims and Modified Refund Claims.

60. Plaintiff's Formal Refund Claims were based upon the amount of the erroneously assessed penalty pursuant I.R.C. § 6663 which the IRS was not entitled to assess and collect for the calendar quarter ending September 30, 2003, but nonetheless did so.

61. By letter dated September 28, 2018, the IRS disallowed the refund claims in full.

62. As a result of the IRS's failure to allow the claims for refund, Plaintiff has paid an erroneously assessed penalty pursuant to I.R.C. § 6663 for the quarter ending September 30, 2003, in the amount set forth herein. Plaintiff is entitled to a refund and abatement of such penalty and interest as allowed by law.

COUNT TWO

(Claim for Refund – \$76,054.50 for Form 941 Quarter ending December 31, 2003)

63. Plaintiff repeats and incorporates each of the foregoing allegations as if fully set forth herein.

64. Plaintiff's Protective Refund Claims, Modified Protective Refund Claims, and Formal Refund Claims sought a refund in the amount of \$1,534,504.37 (plus statutory interest) for the nine calendar quarters at issue, including a refund of \$76,054.50 for the penalty pursuant to I.R.C. § 6663 for the calendar quarter ending December 31, 2003.

65. Plaintiff's Protective Refund Claims were timely filed.

66. Plaintiff's Modified Refund Claims were timely filed while the IRS was considering the Protective Refund Claims.

67. Plaintiff's Formal Refund Claims properly perfected the Protective Refund Claim and Modified Refund Claim.

68. Plaintiff's Formal Refund Claims were based upon the amount of the erroneously assessed penalty pursuant I.R.C. § 6663 which the IRS was not entitled to collect for the calendar quarter ending December 31, 2003, but did.

69. By letter dated September 28, 2018, the IRS disallowed the claim in full.

70. As a result of the IRS's failure to allow the claim for refund, Plaintiff has paid an erroneously assessed penalty pursuant to I.R.C. § 6663 for the calendar quarter ending December 31, 2003, in the amount set forth herein. Plaintiff is entitled to a refund and abatement of such penalty and interest as allowed by law.

COUNT THREE

(Claim for Refund – \$25,738.00 for Form 941 Quarter ending March 31, 2004)

71. Plaintiff repeats and incorporates each of the foregoing allegations as if fully set forth herein.

72. Plaintiff's Protective Refund Claims, Modified Protective Refund Claims, and Formal Refund Claims sought a refund in the amount of \$1,534,504.37 (plus statutory interest) for the nine calendar quarters at issue, including a refund of \$25,738.00 for the penalty pursuant to I.R.C. § 6663 for the calendar quarter ending March 31, 2004.

73. Plaintiff's Protective Refund Claims were timely filed.

74. Plaintiff's Modified Refund Claims were timely filed while the IRS was considering the Protective Refund Claims.

75. Plaintiff's Formal Refund Claims properly perfected the Protective Refund Claim and Modified Refund Claim.

76. Plaintiff's Formal Refund Claims were based upon the amount of the erroneously assessed penalty pursuant I.R.C. § 6663 which the IRS was not entitled to collect for the calendar quarter ending March 31, 2004, but did.

77. By letter dated September 28, 2018, the IRS disallowed the claims in full.

78. As a result of the IRS's failure to allow the claims for refund, Plaintiff has paid an erroneously assessed penalty pursuant to I.R.C. § 6663 for the calendar quarter ending March 31, 2004, in the amount set forth herein. Plaintiff is entitled to a refund and abatement of such penalty and interest as allowed by law.

COUNT FOUR

(Claim for Refund – \$50,497.00 for Form 941 Quarter ending June 30, 2004)

79. Plaintiff repeats and incorporates each of the foregoing allegations as if fully set forth herein.

80. Plaintiff's Protective Refund Claims, Modified Protective Refund Claims, and Formal Refund Claims sought a refund in the amount of \$1,534,504.37 (plus statutory interest) for the nine calendar quarters at issue, including a refund of \$50,497.00 for the penalty pursuant to I.R.C. § 6663 for the calendar quarter ending June 30, 2004.

81. Plaintiff's Protective Refund Claims were timely filed.

82. Plaintiff's Modified Refund Claims were timely filed while the IRS was considering the Protective Refund Claims.

83. Plaintiff's Formal Refund Claims properly perfected the Protective Refund Claim and Modified Refund Claim.

84. Plaintiff's Formal Refund Claims were based upon the amount of the erroneously assessed penalty pursuant I.R.C. § 6663 which the IRS was not entitled to collect for the calendar quarter ending June 30, 2004, but did.

85. By letter dated September 28, 2018, the IRS disallowed the claims in full.

86. As a result of the IRS's failure to allow the claim for refund, Plaintiff has paid an erroneously assessed penalty pursuant to I.R.C. § 6663 for the calendar quarter ending June 30, 2004, in the amount set forth herein. Plaintiff is entitled to a refund and abatement of such penalty and interest as allowed by law.

COUNT FIVE

(Claim for Refund – \$50,381.00 for Form 941 Quarter ending September 30, 2004)

87. Plaintiff repeats and incorporates each of the foregoing allegations as if fully set forth herein.

88. Plaintiff's Protective Refund Claims, Modified Protective Refund Claims, and Formal Refund Claims sought a refund in the amount of \$1,534,504.37 (plus statutory interest) for the nine calendar quarters at issue, including a refund of \$50,381.00 for the penalty pursuant to I.R.C. § 6663 for the calendar quarter ending September 30, 2004.

89. Plaintiff's Protective Refund Claims were timely filed.

90. Plaintiff's Modified Refund Claims were timely filed while the IRS was considering the Protective Refund Claims.

91. Plaintiff's Formal Refund Claims properly perfected the Protective Refund Claims and Modified Refund Claims.

92. Plaintiff's Formal Refund Claims were based upon the amount of the erroneously assessed penalty pursuant I.R.C. § 6663 which the IRS was not entitled to collect for the calendar quarter ending September 30, 2004, but did.

93. By letter dated September 28, 2018, the IRS disallowed the claims in full.

94. As a result of the IRS's failure to allow the claim for refund, Plaintiff has paid an erroneously assessed penalty pursuant to I.R.C. § 6663 for the calendar quarter ending September 30, 2004, in the amount set forth herein. Plaintiff is entitled to a refund and abatement of such penalty and interest as allowed by law.

COUNT SIX

(Claim for Refund – \$51,047.00 for Form 941 Quarter ending December 31, 2004)

95. Plaintiff repeats and incorporates each of the foregoing allegations as if fully set forth herein.

96. Plaintiff's Protective Refund Claims, Modified Protective Refund Claims, and Formal Refund Claims sought a refund in the amount of \$1,534,504.37 (plus statutory interest) for the nine calendar quarters at issue, including a refund of \$51,047.00 for the penalty pursuant to I.R.C. § 6663 for the calendar quarter ending December 31, 2004.

97. Plaintiff's Protective Refund Claims were timely filed.

98. Plaintiff's Modified Refund Claims were timely filed while the IRS was considering the Protective Refund Claims.

99. Plaintiff's Formal Refund Claims properly perfected the Protective Refund Claims and Modified Refund Claims.

100. Plaintiff's Formal Refund Claims were based upon the amount of the erroneously assessed penalty pursuant I.R.C. § 6663 which the IRS was not entitled to collect for the calendar quarter ending December 31, 2004, but did.

101. By letter dated September 28, 2018, the IRS disallowed the claims in full.

102. As a result of the IRS's failure to allow the claim for refund, Plaintiff has paid an erroneously assessed penalty pursuant to I.R.C. § 6663 for the calendar quarter ending December 31, 2004, in the amount set forth herein. Plaintiff is entitled to a refund and abatement of such penalty and interest as allowed by law.

COUNT SEVEN

(Claim for Refund – \$28,316.00 for Form 941 Quarter ending March 31, 2005)

103. Plaintiff repeats and incorporates each of the foregoing allegations as if fully set forth herein.

104. Plaintiff's Protective Refund Claims, Modified Protective Refund Claims, and Formal Refund Claims sought a refund in the amount of \$1,534,504.37 (plus statutory interest) for the nine calendar quarters at issue, including a refund of \$28,316.00 for the penalty pursuant to I.R.C. § 6663 for the calendar quarter ending March 31, 2005.

105. Plaintiff's Protective Refund Claims were timely filed.

106. Plaintiff's Modified Refund Claims were timely filed while the IRS was considering the Protective Refund Claims.

107. Plaintiff's Formal Refund Claims properly perfected the Protective Refund Claims and Modified Refund Claims.

108. Plaintiff's Formal Refund Claims were based upon the amount of the erroneously assessed penalty pursuant I.R.C. § 6663 which the IRS was not entitled to collect for the calendar quarter ending March 31, 2005, but did.

109. By letter dated September 28, 2018, the IRS disallowed the claim in full.

110. As a result of the IRS's failure to allow the claim for refund, Plaintiff has paid an erroneously assessed penalty pursuant to I.R.C. § 6663 for the calendar quarter ending March 31, 2005, in the amount set forth herein. Plaintiff is entitled to a refund and abatement of such penalty and interest as allowed by law.

COUNT EIGHT

(Claim for Refund – \$28,541.00 for Form 941 Quarter ending June 30, 2005)

111. Plaintiff repeats and incorporates each of the foregoing allegations as if fully set forth herein.

112. Plaintiff's Protective Refund Claims, Modified Protective Refund Claims, and Formal Refund Claims sought a refund in the amount of \$1,534,504.37 (plus statutory interest) for the nine calendar quarters at issue, including a refund of \$28,541.00 for the penalty pursuant to I.R.C. § 6663 for the calendar quarter ending June 30, 2005.

113. Plaintiff's Protective Refund Claims were timely filed.

114. Plaintiff's Modified Refund Claims were timely filed while the IRS was considering the Protective Refund Claims.

115. Plaintiff's Formal Refund Claims properly perfected the Protective Refund Claims and Modified Refund Claims.

116. Plaintiff's Formal Refund Claims were based upon the amount of the erroneously assessed penalty pursuant I.R.C. § 6663 which the IRS was not entitled to collect for the calendar quarter ending June 30, 2005, but did.

117. By letter dated September 28, 2018, the IRS disallowed the claims in full.

118. As a result of the IRS's failure to allow the claim for refund, Plaintiff has paid an erroneously assessed penalty pursuant to I.R.C. § 6663 for the calendar quarter ending June 30, 2005, in the amount set forth herein. Plaintiff is entitled to a refund and abatement of such penalty and interest as allowed by law.

COUNT NINE

(Claim for Refund – \$52,092.00 for Form 941 Quarter ending September 30, 2005)

119. Plaintiff repeats and incorporates each of the foregoing allegations as if fully set forth herein.

120. Plaintiff's Protective Refund Claims, Modified Protective Refund Claims, and Formal Refund Claims sought a refund in the amount of \$1,534,504.37 (plus statutory interest) for the nine calendar quarters at issue, including a refund of \$52,092.00 for the penalty pursuant to I.R.C. § 6663 for the calendar quarter ending September 30, 2005.

121. Plaintiff's Protective Refund Claims were timely filed.

122. Plaintiff's Modified Refund Claims were timely filed while the IRS was considering the Protective Refund Claims.

123. Plaintiff's Formal Refund Claims properly perfected the Protective Refund Claims and Modified Refund Claims.

124. Plaintiff's Formal Refund Claims were based upon the amount of the erroneously assessed penalty pursuant I.R.C. § 6663 which the IRS was not entitled to collect for the calendar quarter ending June 30, 2005, but did.

125. By letter dated September 28, 2018, the IRS disallowed the claims in full.

126. As a result of the IRS's failure to allow the claim for refund, Plaintiff has paid an erroneously assessed penalty pursuant to I.R.C. § 6663 for the calendar quarter ending September 30, 2005, in the amount set forth herein. Plaintiff is entitled to a refund and abatement of such penalty and interest as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dougherty Electric Inc., demands judgment in its favor and against the United States of America as to each count as follows:

On Count one: the amount of at least \$38,113.00 for the quarter ending September 30, 2003, plus statutory interest on that amount as allowed by law.

On Count two: the amount of at least \$76,054.50 for the quarter ending December 31, 2003, plus statutory interest on that amount as allowed by law.

On Count three: the amount of at least \$25,738.00 for the quarter ending March 31, 2004, plus statutory interest on that amount as allowed by law.

On Count four: the amount of at least \$50,497.00 for the quarter ending June 30, 2004, plus statutory interest on that amount as allowed by law.

On Count five: the amount of at least \$50,381.00 for the quarter ending September 30, 2004, plus statutory interest on that amount as allowed by law.

On Count six: the amount of at least \$51,047.00 for the quarter ending December 31, 2004, plus statutory interest on that amount as allowed by law.

On Count seven: the amount of at least \$28,316.00 for the quarter ending March 31, 2005, plus statutory interest on that amount as allowed by law.

On Count eight: the amount of at least \$28,541.00 for the quarter ending June 30, 2005, plus statutory interest on that amount as allowed by law.

On Count nine: the amount of at least \$52,092.00 for the quarter ending September 30, 2005, plus statutory interest on that amount as allowed by law.

And as to all counts: Costs of this action, an award of reasonable litigation costs and fees incurred pursuant to I.R.C. § 7430 and 28 U.S.C. § 2412, and such other relief as the Court deems just and proper.

Respectfully submitted,

FOX ROTHSCHILD LLP

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Of Counsel:

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Dated: September 23, 2020

In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)

20-1254 T

Names: DOUGHERTY ELECTRIC INC.

Location of Plaintiff(s)/Petitioner(s) (city/state): PHILADELPHIA, PENNSYLVANIA

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): IAN M. COMISKY

Firm Name: FOX ROTHSCHILD LLP

Contact information for pro se plaintiff/petitioner or attorney of record:

Post Office Box:

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Telephone Number: (215) 299-2795; (215) 299-2150 (FAX)

E-mail Address: ICOMISKY@FOXROTHSCHILD.COM

Is the attorney of record admitted to the Court of Federal Claims Bar? Yes No

Nature of Suit Code: 226

Select only one (three digit) nature-of-suit code from the attached sheet.

Agency Identification Code: TRE

Number of Claims Involved: 9

Amount Claimed: \$ 400,779.50

Use estimate if specific amount is not pleaded.

Bid Protest Case (required for NOS 138 and 140):

Indicate approximate dollar amount of procurement at issue: \$ N/A

Is plaintiff a small business? Yes No

Was this action proceeded by the filing of a Yes No

protest before the GAO?

If yes, was a decision on the merits rendered? Yes No

Solicitation No. _____

Income Tax (Partnership) Case:

Identify partnership or partnership group: N/A

Takings Case:

Specify Location of Property (city/state): N/A

Vaccine Case:

Date of Vaccination: N/A

Related case:

Is this case directly related to any pending or previously filed Yes No

case(s) in the United States Court of Federal Claims? If yes, you are required to file a separate notice of directly related case(s). See RCRC 40.2.

Document Removed as Sealed
in the United States Court of
Federal Claims

Appx0037 - Appx0127

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUGHERTY ELECTRIC INC.,)	
)	
Plaintiff,	)	Civil Action No. <u>20-1254 T</u>
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant)	
)	

PLAINTIFF’S MOTION TO SEAL EXHIBITS TO COMPLAINT

Plaintiff Dougherty Electric Inc., by and through its undersigned attorneys, respectfully files this motion to seal three exhibits to its complaint, which is being filed contemporaneously. In support of this motion, Plaintiff states as follows:

1. In this action, Plaintiff seeks recovery of federal employment tax penalties, plus statutory interest on those amounts, erroneously assessed and paid for the calendar quarters ending September 30, 2003; December 31, 2003; March 31, 2004; June 30, 2004; September 30, 2004; December 31, 2004; March 31, 2005; June 30, 2005; and September 30, 2005.

2. In support of its claim for refund of tax penalties, Plaintiff has attached three exhibits to its complaint. The three exhibits consist of the protective refund claims, the modified protective refund claims, and Forms 843 that it submitted to the Internal Revenue Service, as required by Rule 9(m)(2) of the Rules of the United States Court of Federal Claims. *See id.* (“In pleading a claim for a tax refund, a party must include: (A) a copy of the claim for refund.”).

3. In addition, the three exhibits contain the following information required to be pleaded in a claim for tax refund by Rule 9(m)(2)(B) of the Rules of the United States Court of Federal Claims: “(i) the tax year(s) for which a refund is sought; (ii) the amount, date, and place of each payment to be refunded; (iii) the date and place the return was filed, if any; (iv) the name, address, and identification number of the taxpayer(s) appearing on the return; (v) the date

and place the claim for refund was filed; and (vi) the identification number of each plaintiff, if different from the identification number of the taxpayer.”

4. Because the three exhibits contain Plaintiffs confidential personal information, including its Employer Identification number, the exhibits should be filed and maintained under seal. *See* Rule 5.2(d) (“The court may order that a filing be made under seal without redaction.”).

WHEREFORE, Plaintiff Dougherty Electric Inc. respectfully requests that the Court grant this motion and enter an order directing the Clerk of Court to file the three exhibits to its complaint under seal and maintain those exhibits under seal under further order of the Court.

Respectfully submitted,

FOX ROTHSCHILD LLP

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Of Counsel:

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Dated: September 23, 2020

In the United States Court of Federal Claims

No. 20-1254

Filed: September 29, 2020

_____)
DOUGHERTY ELECTRIC, INC.,)
)
Plaintiffs,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

ORDER

On September 23, 2020, plaintiff filed its Motion to Seal Exhibits to Complaint. Plaintiff's Motion to Seal Exhibits to Complaint, ECF 4. For good cause shown, the Court **GRANTS** plaintiff's Motion.

IT IS SO ORDERED.

s/ *Loren A. Smith*

Loren A. Smith,
Senior Judge

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 20-1254 T
(Sr. Judge Loren A. Smith)

DOUGHERTY ELECTRIC, INC.,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

MOTION OF THE UNITED STATES TO DISMISS THE COMPLAINT

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 20-1254 T
(Sr. Judge Loren A. Smith)

DOUGHERTY ELECTRIC, INC.,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

MOTION OF THE UNITED STATES TO DISMISS THE COMPLAINT

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (Rule(s) or RCFC), defendant, the United States, by and through its counsel of record, respectfully moves this Court for an order dismissing the complaint for lack of subject-matter jurisdiction and for failure to state a claim upon which relief can be granted.

In its complaint, plaintiff seeks a refund of at least \$400,779.50 plus statutory interest for an alleged overpayment of penalties and interest related to plaintiff’s underpayment of employment taxes related to plaintiff’s owner’s criminal restitution order. Plaintiff makes two arguments. *First*, plaintiff argues that the Internal Revenue Service (“IRS”) did not have supervisory approval under § 6751(b)¹ prior to communicating the imposition of civil fraud penalties against plaintiff. *Second*, plaintiff argues that the IRS was prohibited from imposing penalties and interest on plaintiff’s owner’s criminal restitution order.

¹ Unless specified otherwise, references to “section” or “§” are to the Internal Revenue Code of 1986, as amended, 26 U.S.C.

As an initial matter, plaintiff has failed to properly invoke this Court’s jurisdiction for its claim under § 6751(b) because plaintiff did not duly file a claim for refund on this issue with the IRS prior to filing suit. *See* § 7422; Treas. Reg. § 301.6402-2(b). Plaintiff’s claim under § 6751(b) was not a timely claim for refund. With respect to plaintiff’s claim regarding plaintiff’s owner’s restitution order, plaintiff has failed to state a claim for which relief can be granted because the law upon which he relies for this claim, § 6201(a)(4), was not in effect at the time plaintiff’s owner’s restitution was ordered. Moreover, plaintiff’s reliance on the case of *Klein v. Commissioner*, 149 T.C. 341 (2017), is misplaced because the facts of *Klein* are materially different from the issues presented in this case. Accordingly, this Court should dismiss plaintiff’s complaint for lack of subject matter jurisdiction and for failure to state a claim for which relief can be granted.

BACKGROUND

Donald Dougherty, Jr. (“Mr. Dougherty”) owned and operated Dougherty Electric, Inc. (“plaintiff”), a corporation based in Philadelphia, Pennsylvania. (Compl. ¶¶ 9-10.) Mr. Dougherty was the president and sole shareholder of Dougherty Electric. (*Id.*)

I. Donald Dougherty’s Criminal Conviction

In 2007, Mr. Dougherty was indicted by a grand jury for tax evasion and subscribing to false returns. (Compl. ¶ 12; *United States v. Donald Dougherty, Jr.*, Crim. No. 07-361-1 (E.D. Pa.) (“*Dougherty I*”), ECF No. 1 (Indictment) (Def. Exh. A).) He was also indicted for operating an illegal cash payroll, stealing from a union benefits plan, making illegal payments to a union official, bribing a bank official, and illegally including the relative of a union official in his employee health plan. *Id.* In 2008, Mr. Dougherty pleaded guilty in the U.S. District Court for the Eastern District of Pennsylvania (“sentencing court”) to all but one of the 100 counts against

him, including tax evasion on his individual returns for the 2002 through 2004 tax years and tax evasion under § 7201 for the employment taxes at issue in this case. (*Dougherty I*, ECF No. 114 (Judgment) (Def. Exh. B).)

As part of his plea agreement, Mr. Dougherty agreed to “pay all remaining taxes, interest, and penalties, as determined by the IRS to be due and owing.” (*Dougherty I*, ECF No. 103 (Plea Agreement) (Def. Exh. C ¶ 10(h)).) Mr. Dougherty further “agree[d] not to file any claims for refund of taxes, penalties and interest for the years 2003 through 2004 or for any other amounts paid pursuant to this agreement.” *Id.* ¶ 10(b).

In his criminal case, judgment was entered against Mr. Dougherty on December 17, 2008. (Def. Exh. B). On December 23, 2008, Mr. Dougherty was sentenced to two years in prison and ordered to pay restitution totaling \$2,306,541, including \$1,633,471 to the IRS. *Id.*

The Restitution Information Sheet, prepared by IRS Criminal Investigation, provides the following summary of the restitution that Mr. Dougherty was ordered to pay to the IRS:

Tax Period	Amount to be Credited to Tax Form 1040	Interest due as of 12/17/2008
12/31/2002	\$249,679.00	\$104,929.00
12/31/2003	\$183,184.00	\$65,515.00
12/31/2004	<u>\$83,638.00</u>	<u>\$24,583.00</u>
Income Tax	<u>\$516,501.00</u>	<u>\$195,027.00</u>
	Employment Tax Form 941	
6/30/2001	\$33,225.46	\$11,120.00
9/30/2001	\$58,802.30	\$11,219.00
12/31/2001	\$19,418.66	\$9,139.00
9/30/2002	\$16,782.56	\$7,326.58
12/31/2002	\$47,756.44	\$7,781.00
3/30/2003	\$42,040.00	\$7,545.00
6/30/2003	\$13,499.00	\$5,394.00

9/30/2003	\$50,817.00	\$7,475.00	
12/31/2003	\$101,406.00	\$7,457.00	
3/30/2004	\$34,317.00	\$10,578.00	
6/30/2004	\$67,329.00	\$10,830.00	
9/30/2004	\$67,175.00	\$10,802.00	
12/31/2004	\$68,062.00	\$11,963.00	
3/30/2005	\$37,755.00	\$10,990.00	
6/30/2005	\$38,055.00	\$10,340.00	
9/30/2005	\$69,457.00	\$10,473.00	
12/31/2005	\$4,557.00	\$1,047.00	
Employment	<u>\$770,454.42</u>	<u>\$151,479.58</u>	
Totals	<u>\$1,286,964.42</u>	<u>\$346,506.58</u>	<u>\$1,633,471.00</u>

(Def. Exh. F; Compl. ¶ 17.)

II. Plaintiff’s Civil Tax Examination

Following Mr. Dougherty’s criminal conviction, the IRS commenced a civil examination of *plaintiff’s* employment tax liabilities. The examinations for the third quarter of 2003 through the fourth quarter of 2004 began on August 20, 2009. (Def. Exhs. H at 61; I at 64; J at 67; K at 69; L at 71; M at 73.) And, the examinations for the first three quarters of 2005 began on August 27, 2009. (Def. Exhs. N at 75; O at 77; P at 79.)

Following the civil examination, the IRS determined a deficiency in *plaintiff’s* employment tax liabilities for the tax periods ending September 30, 2003 through September 30, 2005. On March 8, 2010, the IRS assessed employment taxes and civil fraud penalties as follows:

Tax Period	Employment Tax Form 941	Civil Fraud Penalty §6663
9/30/2003	\$50,817.00	\$38,112.75
12/31/2003	\$101,406.00	\$76,054.50
3/31/3004	\$34,317.00	\$25,737.75
6/30/2004	\$67,329.00	\$50,496.75
9/30/2004	\$67,175.00	\$50,381.25
12/31/2004	\$68,062.00	\$51,046.50

3/31/2005	\$37,755.00	\$28,316.25	
6/30/2005	\$38,055.00	\$28,541.25	
9/30/2005	<u>\$69,457.00</u>	<u>\$52,092.25</u>	
Total	<u>\$534,373.00</u>	<u>\$400,779.25</u>	<u>\$935,152.25</u>

(Compl. ¶ 17.)

III. Tax Payments

After his release from prison, Mr. Dougherty began making payments on his individual tax liabilities as well as those of Dougherty Electric. As of July 10, 2015, Dougherty Electric paid off the balances due for the employment tax liabilities for all quarters prior to the third quarter of 2003. On December 11, 2015, a remittance of \$1,534,504.37 was sent to the IRS to pay off the remaining employment tax liabilities for the third quarter of 2003 through the third quarter of 2005, and included instructions that the payment was to be applied as follows:

<u>Quarter</u>	<u>Amount</u>
9/30/2003	\$110,246.19
12/31/2003	308,632.07
3/31/2004	111,821.42
6/30/2004	217,030.25
9/30/2004	214,368.34
12/31/2004	214,696.57
3/31/2005	117,677.67
6/30/2005	116,975.38
9/30/2005	<u>123,056.48</u>
Total	<u>\$1,534,504.37</u>

(Compl. ¶ 23; Compl. Exh. C at ECF p. 21 of 91.)

IV. Plaintiff's Purported Claims for Refund

On December 7, 2017—four days before the expiration of the statute of limitations on filing a claim for refund, *see* § 6511(a)—plaintiff, through its representative, submitted a letter to the IRS entitled “PROTECTIVE CLAIM FOR REFUND,” which stated in its entirety the following:

The taxpayer is hereby filing a protective refund claim for penalties and interest in the amount of at least \$1,534,504.37 paid on December 11, 2015. This payment

was made in connection with a restitution-based assessment following the conviction of the taxpayer's owner for various tax offenses, and included taxes, interest, and fraud penalties. In *Klein v. Commissioner*, 149 T.C. No. 15 (Oct. 3, 2017), the United States Tax Court held that a restitution-based assessment pursuant to 26 U.S.C. § 6201(a)(4) may only be based upon taxes due and owing, and may not include interest or additions-to-tax. The restitution-based assessment in this case must be limited to taxes only, and the taxpayer is therefore entitled to a refund of all interest and penalties paid, or that should have been allocated to interest and penalties, on December 11, 2015. The taxpayer also reserves the right to argue that all interest and penalty assessments were invalid and to seek a refund of an additional amount. The taxpayer therefore files this claim for refund as a protective matter.

(Compl. Exh. A at ECF p. 2-3 of 91.)

On April 10, 2018—after the expiration of the statute of limitation for filing a claim for refund—plaintiff, again through its representative, sent another letter to the IRS, this time entitled “MODIFIED PROTECTIVE CLAIM FOR REFUND,” which stated in entirety the following:

On behalf of the above-referenced taxpayer (“the taxpayer”), this letter relates to the protective claim for refund submitted on December 7, 2017 for tax years 2002, 2003, and 2004 (“Refund Claim”) (a copy of which is enclosed).

The taxpayer is filing a modified Refund Claim for penalties and interest in the amount of at least \$1,534,504.37 paid on December 11, 2015. The taxpayer's Refund Claim is hereby modified as follows: in addition to the taxpayer's reliance on *Klein v. Commissioner*, 149 T.C. No. 15 (Oct. 3, 2017), the taxpayer further asserts that the Commissioner failed to comply with the requirements of I.R.C. § 6751(b)(1). See *Graev v. Commissioner*, 149 T.C. 23 (Dec. 20, 2017), supplementing 147 T.C. 16 (Nov. 30, 2016). The taxpayer's Refund Claim is unchanged in all other respects.

(Compl. Exh. B at ECF p. 7 of 91.)

V. The IRS's Review of Plaintiff's Purported Claims for Refund

On June 19, 2018, the IRS responded to plaintiff's representative with a letter (LTR 3010C), which stated that the IRS “can't allow your request to remove all of the interest charged on your account.” The letter further stated in part:

The interest wasn't an excessive amount, assessed after the expiration of the period of limitation on assessment, or erroneously or illegally assessed.

As for the interest portion of the protective claim you filed on December 7, 2017, IRC 6201(a)(4) states that a criminal restitution based assessment is treated as tax. Accordingly, as with any tax assessment, if the amount is not paid when due, interest will accrue from the due date until paid in full.

(Def. Exh. D.) The letter also provided information about Dougherty Electric's appeal rights.

On the same date, the IRS also sent a second letter (LTR 916C) indicating that it could not process Dougherty Electric's claim for refund received on December 13, 2017 "because your supporting information was not complete." (Def. Exh. E.) The letter further stated in part:

As for the penalty portion of the protective claim you filed on December 7, 2017, please submit a copy of the restitution order for review so a final determination can be made. When doing so, you should file a signed Form 843 for each affected annual period. A determination on the interest portion of your claim is addressed in a separate notice being sent to you.

(*Id.*)

On August 24, 2018, the IRS received nine Forms 843, Claim for Refund and Request for Abatement, one each for the third quarter of 2003 through the third quarter of 2005. (Compl. Exh. C at ECF p. 14 of 91.) They were all signed by Mr. Dougherty on behalf of plaintiff. (*Id.*) These claims contained the tax periods as well as the specific amount applied to each quarter from the December 11, 2015, payment. The bottom of each form stated:

"A Protective Claim for Refund was filed by Certified Mail on December 7, 2017 and a Modified Protective Claim for Refund was filed April 10, 2018 (Certified Mail Receipts are attached). Also, attached is a copy of both claims and a copy of the bank check dated 12/11/2015 for the \$1,534,504.37 payment made and a schedule showing how the payment was applied."

(*Id.*)

On September 28, 2018, the IRS issued notices of claim disallowance formally denying Dougherty Electric's refund claims. The letters related to each calendar year (2003, 2004, and 2005) covered by the claims. Each letter explained why plaintiff's claims were disallowed:

There were no expected changes in current regulations, pending legislation or current litigation relevant to the United States District Court’s Judgment dated December 17, 2008 in which it was ordered that criminal monetary penalties restitution of \$1,633,471.00 be made to the IRS. The Judgment of the Court is clear and there is no Statute or Regulation upon which to base your claim.

(Def. Exh. G.)²

ARGUMENT

I. **This Court lacks jurisdiction over plaintiff’s claim for alleged violations of I.R.C. § 6751(b).**

It is well-settled that before bringing a tax refund suit, taxpayers must first pay the amount of the assessed tax and file a timely claim for refund with the IRS. *See* § 7422(a); *United States v. Clintwood Elkhorn Mining*, 553 U.S. 1, 4 (2008). If no refund claim is filed with the IRS, a tax refund suit ““may not be maintained in any court.”” *Id.* at 5 (quoting *United States v. Dalm*, 494 U.S. 596, 602 (1990)). The IRS by regulation requires that claims for refund “set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof.” *Treas. Reg. § 301.6402–2(b)(1)*; *accord United States v. Kales*, 314 U.S. 186, 193 (1941).

The Supreme Court has held that a taxpayer’s claim may not be barred by the statute of limitations even though the taxpayer failed to timely file a formal, detailed claim required by the regulations, if the taxpayer can establish that it filed an informal claim for refund within the statute of limitations. *See, e.g., Kales*, 314 U.S. at 196–97; *United States v. Andrews*, 302 U.S. 517, 524, (1938). The informal claim doctrine provides that a timely claim with *purely formal defects* is permissible if it *fairly apprises* the IRS of the basis for the claim within the limitations

² A copy of the notice of claim disallowance was not included in the administrative file provided to the Department of Justice by the IRS. However, the administrative file contained a copy of the language used in the notice of claim disallowance. (*See* Def. Exh. G.)

period.” *Computervision Corp. v. United States*, 445 F.3d 1355, 1364 (Fed. Cir. 2006) (emphasis added). To qualify, an informal claim must “have a written component” and “adequately apprise the Internal Revenue Service that a refund is sought and for certain years.” *Id.* at 1365 (citations omitted).

A. Plaintiff’s December 2017 letter did not raise the penalty approval issue under I.R.C. § 6751(b).

Plaintiff filed formal claims for refund on August 16, 2018, which was beyond the limitations period for filing a claim. (Compl. ¶ 36.) Consequently, jurisdiction over plaintiff’s claims rely on plaintiff’s allegation that the December 17, 2017 letter to the IRS was an informal claim under the informal claim doctrine. *See generally Computervision*, 445 F.3d at 1355. For the purposes of this motion only, defendant assumes that the December 17, 2017, letter is an informal claim because at all events, the letter failed to proper raise the penalty approval argument plaintiff now advances.³

On December 7, 2017, plaintiff, Dougherty Electric, filed a “protective claim for a refund.”⁴ (Compl. Exh. A at ECF p. 2-3 of 91.) The “protective claim” sought a refund of “penalties and interest . . . in connection with a restitution-based assessment following the conviction of the taxpayer’s owner for various tax offenses.” *Id.* The letter, however, suffered from numerous defects in that it failed to specify (a) which tax years were at issue; (b) identify plaintiff’s “owner” or provide the owner’s tax identification number; (c) provide a copy of the

³ While defendant assumes that the December 17, 2017, letter is an informal claim for purposes of this motion, as noted herein, the letter suffers from numerous defects that arguably render it insufficient as an informal claim. *See Computervision*, 445 F.3d at 1364; *Kales*, 314 U.S. at 194.

⁴ Plaintiff styles each of the letters he sent to the IRS as a “protective refund claim.” Protective claims “may be informal claims, formal claims, or amended returns.” Internal Revenue Manual (IRM), § 21.5.3.4.7.3. Normally, protective refund claims turn on “*expected*” (*i.e.*, future) changes in regulations, legislation, or ongoing litigation. *Id.* (emphasis added).

restitution order; (d) explain why a corporate entity was seeking a refund of payment that had been made in connection with an individual’s criminal restitution; or (e) identify the court with jurisdiction over the restitution order. *See id.* The only enclosure to the letter was a power of attorney. *Id.*

On about April 10, 2018, and well past the statute of limitations, plaintiff sent a second letter to the IRS that purported to amend the purported informal claim filed on December 7, 2017. (Compl. Exh. B at ECF p. 7 of 91.) As the April 2018 letter plainly states, the purpose of the letter was to put a new legal theory in play. It stated:

The taxpayer’s Refund Claim is hereby modified as follows: *in addition* to the taxpayer’s reliance on *Klein v. Commissioner* . . . the taxpayer *further asserts* that the Commissioner failed to comply with the requirements of I.R.C. § 6751(b)(1).

Id. (emphasis added). This new theory—that a supervisor’s signature was not timely obtained—is entirely absent from the December 7, 2017, letter.

As the April 10, 2018, letter was untimely, it must fit within the narrow set of circumstances outlined by the Federal Circuit that allow for the untimely amendment of a refund claim. *Computervision*, 445 F.3d at 1364-1371. A taxpayer can amend a refund claim when (a) the timely claim was a “general claim”; (b) the conduct of the IRS constituted “waiver” of the statute of limitations; or (c) the untimely amendment is “germane” to a formal timely claim. *Id.* Because no circumstance was present that would allow for the untimely amendment of plaintiff’s refund claim, the April 2018 letter cannot be considered as an operative amendment to plaintiff’s December 17, 2017, letter.

B. The general claim doctrine is inapplicable to the April 10, 2018, letter.

Under the general claim doctrine, a taxpayer who filed a general claim (within the statute of limitations) may make an amendment (outside the statute of limitations) that “makes the general claim more specific.” *Id.* at 1368. A general claim is one that does “not set forth any

specific ground” for the refund. *Id.* A taxpayer may make an untimely amendment to a general claim that “perfected and made specific” the original general claim. *Id.* at 1369 (quoting *Cochran v. United States*, 62 F. Supp. 872, 875 (Ct. Cl. 1945)).

While a taxpayer can make an untimely specific amendment to a general claim, the inverse is prohibited. “[T]he general claim doctrine only applies when the original claim is general rather than specific.” *Id.* at 1369. The Federal Circuit went on to say that no less than the Supreme Court “held that where the original timely claim asserted a specific ground, it could not be amended out of time to claim a new basis for relief unrelated to the original claim.” *Id.* at 1369 (citing *United States v. Andrews*, 302 U.S. 517, 524 (1938)). Indeed, in *Computervision*, the Federal Circuit found that because the plaintiff made a specific claim when it claimed a refund, the general claim doctrine was inapplicable.⁵ *Id.* (“Here *Computervision*’s original claim was not general but specific.”)

Here, however, plaintiff did not file a general claim, and therefore the general claim doctrine does not permit the untimely April 10, 2018, letter to amend the purported refund claim contained in the December 7, 2017, letter. The December 7, 2017, letter made a specific request for a refund. The letter stated that “a restitution based assessment pursuant to 26 U.S.C. § 6201(a)(4) may only be based upon taxes due and owing. . . and the taxpayer is therefore entitled to a refund of all interest and penalties paid.” (Compl. Exh. B at ECF p. 8 of 91.) The letter cited a specific statute and a recent case, *Klein v. Commissioner*, as the legal authority for the refund request. *See id.* “The very specification” of a specific statute relating to a restitution-

⁵ Additionally, both the Federal Circuit and Supreme Court have rejected adding boiler plate language to a specific claim to tack on a general claim. *Id.* In *Computervision*, a statement that plaintiff “claims . . . such other grounds as are shown to be appropriate by the tax returns” did not convert the specific claim into a general claim, and an untimely amendment was still impermissible. *Id.* at 1369.

based assessment and a recent court case on that same issue “would tend to confine the investigation to those items.” *Andrews*, 302 U.S. at 526. Because plaintiff’s December 2017 letter claimed specific relief, the general claim doctrine is inapplicable.

C. The waiver doctrine is inapplicable to the April 10, 2018, letter.

The second relevant exception to the requirement to timely file a refund claim is the waiver doctrine. “If the taxpayer files a timely *formal* claim but fails to include the specific claim for relief [at issue], the claim may nonetheless be considered timely if the IRS considers that specific claim within the limitations period.” *Computervision*, 445 F.3d at 1365. The Federal Circuit explained, “[t]he IRS’s consideration of the specific claim is held to be a waiver of the requirement of the regulation that the refund claim ‘set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof.’” *Id.* (quoting Treas. Reg. § 301.6402-2(b)(1)). In *Angelus Milling*, the Supreme Court held that a taxpayer’s claim was untimely but stated that for the waiver doctrine to apply “the evidence should be clear that the Commissioner understood the specific claim that was made even though there was a departure from form in its submission,” and “the showing should be unmistakable that the Commissioner has in fact seen fit to dispense with [the] formal requirements and to examine the merits of the claim.” *Angelus Milling Co. v. United States*, 325 U.S. 293, 297-98 (1945). The central purpose of the waiver doctrine is “to prevent IRS agents from lulling taxpayers into missing the limitations deadline” *Computervision*, 445 F.3d at 1366 (citations omitted). The waiver doctrine is inapplicable here for two reasons.

First, the waiver doctrine requires the taxpayer to have filed a *timely formal* refund claim. *Id.* As plaintiff admits, plaintiff did not file a formal refund claim until August 16, 2018—well beyond the expiration of the statute of limitations for filing a claim for refund. (Compl. ¶ 36); *see also* § 6511(a).

Second, the waiver doctrine requires that the conduct of the IRS creating the basis for waiver occur *prior* to the statute of limitations lapsing. *Computervision*, 445 F.3d at 1367 (“[T]he IRS cannot waive the requirements of its regulations by conduct outside of the limitations period.”). Thus, waiver cannot occur after the limitations period expires. As explained above, plaintiff’s only timely filing, the December 7, 2017, letter, was filed only four days before the statute of limitations lapsed. There was no IRS conduct before the statute of limitations ran that waived the requirement to file a detailed claim. Indeed, there was no IRS conduct during that four days at all.

While the IRS never considered the supervisory signature argument contained in plaintiff’s April 2018 submission, even if the IRS had, waiver is inapplicable because these new grounds were submitted following the expiration of the statute of limitations. In *Sicanoff Vegetable Oil Corp. v. United States*, 149 Ct. Cl. 278 (1960), “the Court of Claims refused to find a waiver where the taxpayer filed a timely claim asserting one ground, the limitations period expired, and the Commissioner then by mistake considered a different second ground.” *Computervision*, 445 F.3d at 1367 (discussing *Sicanoff Vegetable Oil Corp. v. United States*, 149 Ct. Cl. 278, 284). The Court of Claims held that the Commissioner “was not permitted by law to pay such a claim, and his consideration of it could not enlarge his legal authority.” *Sicanoff Vegetable Oil Corp.*, 149 Ct. Cl. at 285; *see also United States v. Garbutt Oil*, 302 U.S. 528, 534 (holding that a claim for refund was untimely because “no officer of the government has power to waive the statute of limitations”). Where, as here, plaintiff’s April 2018 claim for refund asserted a “different second ground” for a refund, the IRS was without the legal authority to consider a claim filed beyond the limitations period. Thus, the waiver doctrine is therefore inapplicable.

D. The germaneness doctrine is inapplicable to the April 10, 2018, letter.

The third exception to the requirement to timely file refund claims is referred to as the “germaneness doctrine.” *Computervision*, 445 F.3d at 1370. The germaneness doctrine allows an untimely amendment to a refund claim “only . . . where the taxpayer (1) files a *formal claim* within the limitations period making a specific claim; and (2) after the limitations period but, while the IRS still has jurisdiction over the claim, files a formal amendment raising a new legal theory—not specifically raised in the original claim—that is ‘germane’ to the original claim.” *Id.* (emphasis added). The relevant inquiry in determining whether one legal theory is germane to the other is “whether the underlying facts supporting that legal theory were discovered or should have been discovered by the IRS in considering the original claim during the limitations period.” *Id.*

As with the waiver doctrine, the germaneness doctrine is inapplicable as it requires the taxpayer to file a “formal” refund claim within the limitations period. *Id.* As plaintiff admits, a formal refund claim was not filed until August 16, 2018. (Compl. ¶ 36.)

It is clear that the matter raised in the untimely April 10, 2018, letter was not germane to the issue asserted in the December 7, 2017, letter. Even cursory consideration of the “underlying facts” required to investigate the December 7, 2017, and April 10, 2018, letters makes clear that the latter was not germane to the former. (*Compare* Compl. Exh. A *with* Compl. Exh. B.) The December 7, 2017, letter implicated whether the IRS improperly assessed penalties and interest against *plaintiff’s owner* as part of a *criminal* restitution order. This claim required looking into the criminal restitution order, the criminal restitution payments, the guilty plea, and the associated court records of the taxpayer’s owner. By contrast, the new issue raised in the April 2018 letter—the requirement for a supervisory signature—required the IRS to determine whether there had been a *civil* examination and assessment of penalties against *plaintiff*, and if so,

whether the IRS followed proper procedure in obtaining a supervisor's signature before informing plaintiff of possible penalties. The IRS's investigation of the merits of plaintiff's December 2017 claim would not have involved a consideration of the facts upon which the April 2018 letter depended. *See Addressograph-Multigraph Corp. v. United States*, 112 Ct. Cl. 201, 220-21 (1948) (discussing the germaneness doctrine and collecting cases). The facts underlying plaintiff's April 2018 claim for the improper imposition of civil penalties related to plaintiff's employment tax examination were not and would not have been discovered in the IRS's review of the December 2017 claim for a refund related to Mr. Dougherty's criminal restitution order.

As the April 10, 2018, letter was untimely, and none of the exceptions that allow for the untimely amendment of a refund claim apply, this Court lacks jurisdiction to entertain the new issues contained in the letter.

E. Plaintiff's formal claims did not perfect its informal claim.

Plaintiff filed Forms 843 in an attempt to perfect its informal claim for refund. As a matter of law, however, these filed forms could not perfect plaintiff's April 2018 Modified Protective Claim because the April 2018 submissions were untimely informal claims. Thus, the only claim that the Forms 843 could perfect was the one contained in the December 2017 submission.

Plaintiff's formal claims also failed to perfect the informal claim because the formal claims all contained numerous errors.

First, in each Form 843, plaintiff stated that the type of penalty at issue was under I.R.C. § 6653(b) and 6651(a):

4 Type of penalty. If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: 6653 (b) and 6651 (a) (3)

(*E.g.*, Compl. Exh. C at ECF p. 14 of 91.) Neither statute tracks the matters raised in this

lawsuit. Indeed, § 6653 provides for penalties for not paying stamp taxes, and it does not contain subsection (b). By contrast, in each count of the complaint, plaintiff asserts that it seeks a refund of the civil fraud penalties imposed by § 6663. (Compl. ¶¶ 55-126.)

Second, in each formal refund claim plaintiff selected that Dougherty Electric was entitled to a refund based on “employment taxes” paid on its Form “1040” tax return. (*See, e.g.*, Compl. Exh. C at ECF p. 30 of 91.) A Form 1040 is used for individual returns, while employment taxes are filed on Forms 941 and 940.

Lastly, in addition to misdirecting the IRS to the penalties and forms at issue, substantively, the formal claims simply referred the IRS to the two letters. Thus, the failure to “set forth in detail each ground” for refund in the informal claims was not perfected by the formal claims. *Id.*; Treas. Reg. § 301.6402-2(b)(1)). Indeed, as the letters failed to identify the tax at issue, or the taxpayer who had the “restitution-based assessment,” the formal claims’ misstatement of the penalties at issue and the tax forms at issue compounded rather than corrected the errors and omissions in the informal claims.

Thus, an examination of the formal claims filed by plaintiff demonstrate that plaintiff’s claims failed to apprise the IRS of the basis for which Dougherty Electric was entitled to a refund. Therefore, plaintiff’s formal claims failed to perfect the earlier informal claims. Without a perfected claim for refund, the Court lacks subject matter jurisdiction over plaintiff’s penalty approval claim.

II. Plaintiff has failed to state a claim in its challenge to Mr. Dougherty’s restitution under § 6201(a)(4) or *Klein v. Commissioner*.⁶

In its December 17, 2017, letter, plaintiff appears to argue that the “restitution-based assessment [pursuant to I.R.C. § 6201(a)(4)] must be limited to taxes only” and explicitly refers to *Klein v. Commissioner*, 149 T.C. 341 (2017), to support this proposition. Plaintiff also cites *Klein* in its complaint. At the outset, to the extent plaintiff attempts to rely on § 6201(a)(4) and *Klein* as a basis for recovery, plaintiff’s complaint fails to meet the “threshold requirement of Rule 8(a)(2) that the ‘plain statement’ possess enough heft to ‘sho[w] that the pleader is entitled to relief.’” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Plaintiff’s failure to raise § 6201(a)(4) at all and its passing reference to *Klein* fall short of the requirement that “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570).

Moreover, plaintiff’s allegations fail to state a claim for which relief can be granted because § 6201(a)(4) was not in effect when Mr. Dougherty’s restitution was imposed and because plaintiff has failed to allege that the IRS imposed and collected penalties or interest in addition to the amounts due under Mr. Dougherty’s restitution order.

⁶ None of the nine counts included in the complaint assert that plaintiff is entitled to a refund under § 6201(a)(4) and *Klein v. Commissioner*. (*See* Compl. ¶¶ 55-126.) Instead, each count only asserts a refund is due for an alleged violation of imposition of § 6663 without prior supervisory approval. However, the *Klein* matter was the only issue asserted in the only document timely filed by plaintiff—the December 7, 2017 letter. (Compl. Exh. A.) While omitted from the counts in the complaint, the body of the complaint specifically references *Klein*, and the *Klein* issue was only issue asserted in the only document timely filed by plaintiff. (Compl. ¶¶ 45; 49.) Accordingly, the government assumes plaintiff intends to assert a refund under *Klein*.

A. I.R.C. § 6201(a)(4) is inapplicable to Mr. Dougherty’s restitution order.

Plaintiff has failed to state a claim for relief for any alleged violation of § 6201(a)(4) because Mr. Dougherty’s restitution as part of his criminal conviction was imposed prior to the effective date of § 6201(a)(4).

Enacted in 2010, § 6201(a)(4) provides that “the Secretary [of the Treasury] shall assess and collect the amount of restitution under an order pursuant to section 3556 of title 18, United States Code, for failure to pay any tax imposed under this title in the same manner as if such amount were such tax.” § 6201(a)(4); *see* Firearms Excise Tax Improvement Act of 2010 (“FETIA”), Pub. L. No. 111-237, § 3, 124 Stat. 2497. Prior to the enactment of § 6201(a)(4), “various provisions of Title 18 had authorized District Courts to order restitution to the IRS when imposing sentences for tax-related crimes.” *Klein*, 149 T.C. at 350. Responsibility for collecting and remitting to the IRS restitution for tax-related crimes was primarily with the Department of Justice. *See id.* The Justice Department’s Financial Litigation Unit (FLU) “reported restitution payments to the sentencing court and eventually transmitted the funds to the IRS.” *Id.* However, before the enactment of § 6201(a)(4), “the IRS lacked a proper accounting mechanism to credit receipts of restitution payments.” *Id.* at 351. “By adding § 6201(a)(4) to the Code in FETIA, Congress sought to fill this gap by granting the IRS early assessment authority for restitution awards.” *Id.* Under the new law, the IRS can assess the amount of restitution ordered by a District Court as soon as that order becomes final. *See* § 6201(a)(4)(B). Accordingly, each restitution payment transmitted to the IRS is now reflected on the taxpayer’s account by an assessment (*i.e.*, an account receivable) against which the payment can be credited. *Id.*

This new structure for assessing restitution orders and crediting payments was effective for restitution ordered *only* after August 16, 2010. *See* FETIA at § (3). Here, however, the

sentencing court ordered Mr. Dougherty’s restitution on December 17, 2008—nearly 20 months before § 6201(a)(4) became effective. (*See* Def. Exh. B.) Thus, the IRS was not permitted to assess and collect Mr. Dougherty’s restitution order as if it were a tax. Consequently, to the extent plaintiff alleges a cause of action for the violation of § 6201(a)(4), plaintiff has failed to state a claim for which relief can be granted because § 6201(a)(4) is inapplicable to Mr. Dougherty’s restitution.

B. Plaintiff has failed to allege sufficient facts to state a plausible claim for a violation of § 6201(a)(4).

In its complaint, plaintiff appears to allege a violation of § 6201(a)(4), relying on *Klein v. Commissioner*—a Tax Court case interpreting this provision—to support its claim.⁷ Because § 6201(a)(4) was not in effect at the time Mr. Dougherty’s restitution was ordered, the Court need not consider any argument relying on this statutory provision. If the Court were to consider plaintiff’s argument, however, the Court should find that the argument is without merit because plaintiff has failed to allege the facts necessary for that claim, which at a minimum include: (1) that the IRS assessed Mr. Dougherty’s restitution as a tax and; (2) that the IRS treated the restitution as a tax for purposes of assessing and collecting penalties or interest in addition to the amounts due under Mr. Dougherty’s restitution order.⁸

⁷ Notably, it appears that the Court of Federal Claims has not had occasion to address § 6201(a)(4). Additionally, Tax Court opinions are not binding on this Court.

⁸ To the extent plaintiff argues that it is owed a tax refund on the basis of the computation of Mr. Dougherty’s criminal restitution order, this Court is without jurisdiction to adjudicate this matter. The Court of Federal Claims lacks jurisdiction over criminal matters. *Kania v. United States*, 650 F.2d 264, 268, 227 Ct. Cl. 458 (Ct. Cl. 1981) (“[T]he role of the judiciary in the high function of enforcing and policing the criminal law is assigned to the courts of general jurisdiction and not to [the Court of Claims].”). More specifically, “the Court of Federal Claims lacks jurisdiction to review the decisions of district courts . . . relating to proceedings before those courts.” *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994); *Cooper v. United States*, 104 Fed. Cl. 306, 312 (2012).

In *Klein v. Commissioner*, as part of the judgment in their criminal cases, Samuel and Zipora Klein were ordered to pay restitution in the amount of \$562,179 with joint and several liability. *Klein*, 149 T.C. at 344. In accordance with § 6201(a)(4), the IRS assessed the court-ordered restitution against Mr. and Mrs. Klein. *Id.* at 346. Subsequently, the IRS also assessed failure-to-pay penalties under § 6651(a)(3) and underpayment interest under § 6601(a). *Id.* When making this assessment, the IRS simply adopted as the “underpayment” for each year the tax-loss figure accepted by the District Court at the Kleins’ sentencing. *Id.* And the IRS used as the commencement date for calculating interest the original due dates of their 2003-2006 tax returns. *Id.* The IRS also assessed for each year a failure-to-pay penalty under § 6651(a)(3) using the same methodology. *Id.* Thus, the IRS had attempted to assess the amount of the restitution *as a tax* and then assess penalties and interest on that assessed amount. The Kleins challenged the IRS’s assessment of the penalty and interest to the restitution award as above and beyond what the sentencing court ordered.

In the Tax Court, the IRS contended that § 6201(a)(4) allowed it to treat the restitution as a tax and impose penalties and interest on the restitution. However, the Tax Court disagreed with the IRS’s reading of the statute, noting that “as if it were a tax,” as the statute states is different from “as a tax.” *See id.* at 355. The Tax Court found that the IRS’s ability to assess restitution as if were a tax does not mean that the restitution becomes a tax. *See id.* Rather, restitution is treated as if it were a tax, only for the limited purpose of allowing the IRS to create an account receivable against which the restitution can be credited. *Id.* at 352.

In determining Mr. Dougherty’s restitution order, the sentencing court considered the “tax loss” to the government in connection with Mr. Dougherty’s criminal conduct and figured the tax principal and interest through the date of sentencing (December 17, 2008) in accordance

with the Sentencing Guidelines. *See* U.S. Sentencing Guidelines Manual (U.S.S.G.) § 2T1.1(c)(1) (U.S. Sentencing Comm’n 2006). Under the Sentencing Guidelines, interest and penalties are included in “tax loss” for willful evasion of payment cases under 26 U.S.C. § 7201—the crime for which Mr. Dougherty was adjudged guilty.⁹ *See* U.S.S.G. at Application Notes 1.

Notwithstanding the inclusion of interest in the computation of Mr. Dougherty’s restitution (as permitted under the Sentencing Guidelines), plaintiff has failed to allege that the IRS assessed and collected *additional* penalties or interest on Mr. Dougherty’s restitution order. Moreover, the inclusion of interest in the computation of Mr. Dougherty’s restitution is beyond the scope of § 6201(a)(4) or the holding in *Klein*.

To the extent plaintiff conflates Mr. Dougherty’s restitution order with its own civil tax examination, plaintiff’s argument is without merit. The Tax Court noted in *Klein* that the IRS is not prevented from assessing penalties and interest pursuant to its own civil determination of the taxpayer’s liability, stating:

If the IRS wishes to collect interest and additions to tax, it is free to commence a civil examination of those returns at any time. Upon final determination of [the Kleins’] 2006 civil tax liabilities, interest will arise automatically under section 6601(a), and additions to tax (if appropriate) may be imposed under section 6651(a)(3). But the interest and additions to tax would then be computed, not by reference to the \$562,179 [criminal] tax loss, but by reference to whatever [the Kleins’] actual tax liabilities are ultimately determined to be.

Klein, 149 T.C. at 362. In other words, *there is no issue under Klein* if the penalties are based on a separate civil assessment conducted by the IRS, and not the criminal restitution order.

⁹ To the extent plaintiff contends that Mr. Dougherty’s restitution order was improperly computed, plaintiff’s argument would be an improper collateral attack on the criminal judgment from the sentencing court. This Court cannot entertain such a collateral attack.

To allege a claim under *Klein*, plaintiff must allege that the IRS did *not* conduct a civil assessment, and instead the IRS assessed penalties and interest based on the criminal restitution order. Here, however, plaintiff alleged the opposite, stating, “[o]n or about December 17, 2008, the IRS concluded a civil tax examination of Plaintiff and determined the amounts of underpaid federal employment taxes for 17 calendar quarters, including the nine calendar quarters at issue here.” (Compl. ¶ 15.) If the penalties and interest against Dougherty Electric were based on an IRS civil assessment—as plaintiff claims—there is no issue under *Klein*. And indeed, that is what happened.¹⁰

Here, the IRS conducted a civil examination of plaintiff, Dougherty Electric. During that civil examination, the IRS found a deficiency in plaintiff’s own tax liabilities and, in 2010, imposed penalties and interest on the corporation’s failure to pay these deficient taxes. The plain language of § 6201(a)(4) (or the Tax Court’s interpretation of it) does not affect the IRS’s ability to conduct a civil examination of plaintiff and assess penalties and interest on a tax deficiency and plaintiff’s failure to pay. Accordingly, plaintiff has failed to state a claim for which relief can be granted, and the complaint should be dismissed.

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¹⁰ The United States agrees with plaintiff that there was a civil tax assessment of Dougherty Electric, but disputes that the assessment happened as plaintiff claims. This motion does not require resolving that dispute.

CONCLUSION

WHEREFORE, based on all of the reasons set forth above, defendant requests that the Court enter an order dismissing the complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

Respectfully submitted,

Dated: 6/21/2021

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 20-1254 T
(Sr. Judge Loren A. Smith)

DOUGHERTY ELECTRIC, INC.,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

DECLARATION OF JASON S. SELMONT

I, Jason S. Selmont, hereby affirm and attest that the following statements are true, to the best of my knowledge and belief:

1. I am the attorney of the Tax Division, United States Department of Justice, assigned to defend this case.

2. Within my official capacity, I have temporary custody of portions of the Internal Revenue Service and Department of Justice files for the above-captioned case.

3. Attached hereto as the indicated exhibits are true and correct copies of the following documents, which are contained in the official files of the Justice Department Tax Division:

Defendant's Exhibit A – Indictment of Donald Dougherty, Jr., *United States v. Donald Dougherty, Jr.*, Crim. No. 07-361-1 (E.D. Pa.), ECF Doc. No. 1.

Defendant's Exhibit B – Judgment entered in *United States v. Donald Dougherty, Jr.*, Crim. No. 07-361-1 (E.D. Pa.), ECF Doc. No. 114.

Defendant's Exhibit C – Plea Agreement of Donald Dougherty, Jr., *United States v. Donald Dougherty, Jr.*, Crim. No. 07-361-1 (E.D. Pa.), ECF Doc. No. 103 at ECF page 13-21 of 21.

Defendant's Exhibit D – June 19, 2018 Letter 3010C from IRS to plaintiff.

Defendant's Exhibit E – June 19, 2018 Letter 916C from IRS to plaintiff.

Defendant's Exhibit F – IRS Restitution Information Sheet.

Defendant's Exhibit G – IRS document providing a description of the language used in its notice of claim disallowance sent to plaintiff.

Defendant's Exhibit H – IRS Account Transcript for plaintiff's employment tax for 3rd quarter 2003.

Defendant's Exhibit I – IRS Account Transcript for plaintiff's employment tax for 4th quarter 2003.

Defendant's Exhibit J – IRS Account Transcript for plaintiff's employment tax for 1st quarter 2004.

Defendant's Exhibit K – IRS Account Transcript for plaintiff's employment tax for 2nd quarter 2004.

Defendant's Exhibit L – IRS Account Transcript for plaintiff's employment tax for 3rd quarter 2004.

Defendant's Exhibit M – IRS Account Transcript for plaintiff's employment tax for 4th quarter 2004.

Defendant's Exhibit N – IRS Account Transcript for plaintiff's employment tax for 1st quarter 2005.

Defendant's Exhibit O – IRS Account Transcript for plaintiff's employment tax for 2nd quarter 2005.

Defendant's Exhibit P – IRS Account Transcript for plaintiff's employment tax for 3rd quarter 2005.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed in Washington, D.C., this 21st day of June, 2021.

/s/ Jason S. Selmont
JASON S. SELMONT

Exhibit A

Indictment of Donald Dougherty, Jr.,
United States v. Donald Dougherty, Jr.,
Crim. No. 07-361-1 (E.D. Pa.), ECF Doc. No. 1.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 07-
v.	:	DATE FILED: June 26, 2007
DONALD DOUGHERTY, JR.	:	VIOLATIONS:
	:	18 U.S.C. § 1027 (false statements -
	:	ERISA - 38 counts)
	:	18 U.S.C. § 664 (theft of employee
	:	benefits plans - ERISA - 38 counts)
	:	29 U.S.C. § 186 (unlawful payment to a
	:	union official - 2 counts)
	:	18 U.S.C. § 1035 (false statements relating
	:	to health care matters - 1 count)
	:	18 U.S.C. § 215(a)(1) (bank bribery - 1
	:	count)
	:	26 U.S.C. § 7201 (tax evasion - 17 counts)
	:	26 U.S.C. § 7206(1) (filing false and
	:	fraudulent tax returns - 3 counts)
	:	18 U.S.C. § 2 (aiding and abetting)
	:	Notice of forfeiture

INDICTMENT

COUNTS ONE THROUGH THIRTY-EIGHT

(FALSE STATEMENTS - ERISA)

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

1. Defendant DONALD DOUGHERTY, JR. was the president and sole shareholder of Dougherty Electric, Inc. ("Dougherty Electric"), an electrical contracting business that provided electrical and telecommunications services, including installation, design, and cable and fiber optics, located in Philadelphia, Pennsylvania.

2. Defendant DONALD DOUGHERTY, JR., as an employer, was a party to collective bargaining agreements with the International Brotherhood of Electrical Workers Local 98 (“IBEW Local 98”), a trade union headquartered at 1701 Spring Garden Street in Philadelphia, Pennsylvania.

3. IBEW Local 98 was an employee labor organization subject to and within the meaning of Title I of the Employee Retirement Income Security Act of 1974, as amended, Title 29, United States Code, Section 1001, *et seq.* (“ERISA”). IBEW Local 98 was a labor organization engaged in an industry affecting commerce within the meaning of Sections 402(i) and 402(j) of Title 29, United States Code. IBEW Local 98 represented and admitted to membership employees of Dougherty Electric as electricians.

4. The collective bargaining agreements between Dougherty Electric and IBEW Local 98 required that Dougherty Electric and defendant DONALD DOUGHERTY, JR. submit a monthly report along with payments representing employer contributions to employee welfare benefit and pension plans maintained by IBEW Local 98 pursuant to Title I of ERISA, including the following: IBEW Local 98’s Pension Fund, Deferred Income Fund, Vacation Fund, and Health and Welfare Fund (hereinafter, the “employee benefit plans”).

5. Defendant DONALD DOUGHERTY, JR. and Dougherty Electric were provided with a pre-printed monthly form, identified as an “IBEW Local 98 Monthly Payroll Report Summary,” on which defendant DOUGHERTY and Dougherty Electric were required to report the “gross productive electrical payroll” during the monthly period covered by the form and to calculate the amount of Dougherty Electric’s contribution to the employee benefit plans

based on the monthly gross earnings of defendant DOUGHERTY and other IBEW Local 98 electricians employed by Dougherty Electric.

6. Defendant DONALD DOUGHERTY, JR. and Dougherty Electric were required to submit the monthly payroll report summary forms to IBEW Local 98. Title I of ERISA required that these payroll report summaries be kept as part of the records of IBEW Local 98's employee benefit plans.

7. Title I of ERISA required the administrator of IBEW Local 98's employee benefit plans to publish and annually file a Form 5500 Annual Return/Report of Employee Benefit Plan with the Secretary of the United States Department of Labor. The monthly payroll report summaries submitted by defendant DONALD DOUGHERTY, JR. and Dougherty Electric were required to contain necessary and basic information to verify, explain, clarify, and check for accuracy and completeness the annual report published and filed by the administrator of IBEW Local 98's employee benefit plans.

8. Wachovia Bank was the depository of IBEW Local 98's employee benefit plans, and Wachovia Bank's Taft-Hartley Department Manager was the designated recipient of the IBEW Local 98 Monthly Payroll Report Summaries. Under Title I of ERISA, the Taft-Hartley Department Manager was required to verify, explain, clarify, and check the accuracy and completeness of each monthly payroll report summary form submitted by Dougherty Electric. The Taft-Hartley Department Manager relied upon the accuracy of the statements and representations of fact contained on Dougherty Electric's monthly summaries and the accompanying contributions submitted by Dougherty Electric.

9. The Taft-Hartley Department Manager's responsibilities also included tracking down delinquent payroll report summaries and contributions from electrical contractors. In the event of a delinquency, the Taft-Hartley Department Manager provided IBEW Local 98's Board of Trustees with "Employer On-Time Reports" in order for the Board of Trustees to exercise its authority to collect the delinquent contributions and impose sanctions on the delinquent electrical contractor(s).

10. Defendant DONALD DOUGHERTY, JR. was chiefly responsible for the operation and management of Dougherty Electric, including making payroll to his IBEW Local 98 employees and other employees, and authorizing the monthly payroll report summaries and employer contributions submitted on behalf of Dougherty Electric to Wachovia Bank's Taft-Hartley Department Manager for deposit into IBEW Local 98's employee benefit plans. At defendant DOUGHERTY's direction, Dougherty Electric employed Advantage/Paychex ("Advantage"), a payroll service, which withdrew money from Dougherty Electric's payroll account at St. Edmond's Federal Savings Bank to fund Dougherty Electric's weekly payroll and prepare the payroll checks. Advantage made deductions for all federal payroll taxes, including Federal Income Tax Withholding ("FITW") and the Federal Insurance Contributions Act ("FICA"), in addition to state, and local payroll taxes, IBEW Local 98 dues, IBEW Local 98 Job Recovery Fund, and the IBEW Local COPE Fund (Committee on Political Education). On a monthly basis, Dougherty Electric calculated the monthly gross earnings and hours worked by each of Dougherty Electric's IBEW Local 98 member electrical employees and prepared an IBEW Local 98 Monthly Payroll Report. Dougherty Electric prepared a check drawn on Dougherty Electric's general fund account at St. Edmond's Bank which represented Dougherty

Electric's contribution to employees' ERISA employee benefit plans. Afterwards, Dougherty Electric submitted the remittance report and the check to Wachovia Bank's Taft-Hartley Department Manager.

DOUGHERTY'S ILLEGAL CASH PAYROLL SCHEME

11. In addition to the monies received from the payroll service, defendant DONALD DOUGHERTY, JR. also paid himself and Dougherty Electric's electrical and other employees "under the table" in cash. The cash payroll scheme consisted of defendant DOUGHERTY making and causing to be made regular withdrawals of cash from Dougherty Electric's operating account at St. Edmond's Federal Savings Bank. Defendant DOUGHERTY received \$3,000 in cash every week, and Dougherty Electric's IBEW Local 98 member electrical employees and other employees received cash payments for overtime work and, at times, their regular work hours.

12. Defendant DONALD DOUGHERTY, JR. concealed and caused Dougherty Electric employees to conceal on Dougherty Electric's monthly payroll report summaries that defendant DOUGHERTY and Dougherty Electric IBEW Local 98 member electrical employees received cash earnings and the substantial underpayment of employer contributions resulting from defendant DOUGHERTY's failure to report such earnings.

13. Between at least January 2001 and October 2005, defendant DONALD DOUGHERTY, JR. maintained a cash payroll for himself and his employees that amounted to approximately \$2,659,120. By operating a cash payroll, defendant DOUGHERTY caused Dougherty Electric to avoid the payment of federal, state and local payroll taxes on the cash

payments and approximately \$1,067,534 in employer contributions to Dougherty Electric's electrical employees' IBEW Local 98 employee benefit plans.

14. In or about the months listed below, in Philadelphia, in the Eastern District of Pennsylvania, defendant

DONALD DOUGHERTY, JR.,

in payroll report summaries submitted on behalf of Dougherty Electric, required by Title I of the Employment Retirement Income Security Act of 1974, as amended, (ERISA), to be kept as part of records of the International Brotherhood of Electrical Workers Local 98 employee welfare and pension benefit plans, knowingly made, and aided, abetted, and willfully caused to be made, false statements and representations of fact, and knowingly concealed, covered up, and failed to disclose, and aided, abetted, and willfully caused the concealment, cover up, and failure to disclose, facts, the disclosure of which were required by Title I of ERISA, and which were necessary to verify, explain, clarify and check for accuracy and completeness the International Brotherhood of Electrical Workers Local 98's Form 5500, required to be published and certified, in that defendant DOUGHERTY knowingly under-reported the earnings of Dougherty Electric's electrical employees so as to reduce Dougherty Electric's required benefit contributions to the International Brotherhood of Electrical Workers Local 98's employee benefit plans, as follows:

Count	Report Date	Earnings reported	Actual earnings
1	August 2002	\$334,375	\$378,098
2	September 2002	\$279,283	\$290,948
3	October 2002	\$207,858	\$224,705
4	November 2002	\$174,558	\$183,785

Count	Report Date	Earnings reported	Actual earnings
5	December 2002	\$58,303	\$184,179
6	January 2003	\$61,921	\$169,459
7	February 2003	\$124,168	\$137,480
8	March 2003	\$187,070	\$199,797
9	April 2003	\$226,722	\$241,862
10	May 2003	\$239,752	\$252,738
11	July 2003	\$151,334	\$251,369
12	August 2003	\$254,577	\$296,244
13	September 2003	\$298,495	\$320,620
14	October 2003	\$120,593	\$255,603
15	November 2003	\$203,359	\$303,147
16	December 2003	\$210,322	\$291,828
17	January 2004	\$220,116	\$241,099
18	February 2004	\$184,776	\$210,818
19	March 2004	\$239,257	\$278,364
20	April 2004	\$189,792	\$227,583
21	May 2004	\$87,515	\$196,769
22	June 2004	\$252,324	\$306,708
23	July 2004	\$190,436	\$235,562
24	August 2004	\$250,771	\$355,774
25	September 2004	\$198,466	\$255,313
26	October 2004	\$205,711	\$236,441
27	November 2004	\$170,183	\$225,885
28	December 2004	\$168,099	\$293,705
29	January 2005	\$235,080	\$250,066

Count	Report Date	Barbills reported	Assets seized
30	February 2005	\$177,012	\$217,578
31	March 2005	\$169,093	\$227,144
32	April 2005	\$199,525	\$239,776
33	May 2005	\$267,216	\$305,567
34	June 2005	\$1,350	\$40,201
35	July 2005	\$194,263	\$274,874
36	August 2005	\$137,167	\$255,767
37	September 2005	\$207,084	\$227,533
38	October 2005	\$211,463	\$223,725

All in violation of Title 18, United States Code, Sections 1027 and 2.

COUNTS THIRTY-NINE THROUGH SEVENTY-SIX

(THEFT FROM EMPLOYEE BENEFIT PLANS - ERISA)

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. The allegations set forth in paragraphs 1 through 13 of Counts One through Thirty-Eight are realleged here.
2. In or about the months listed below, in Philadelphia, in the Eastern District of Pennsylvania, defendant

DONALD DOUGHERTY, JR.

embezzled, stole, unlawfully abstracted, converted to his own use, and aided, abetted, and willfully caused the embezzlement, theft, unlawful abstraction, and conversion to his own use of, approximately \$869,599, from the moneys, funds, securities, premiums, credits, property and other assets of IBEW Local 98's employee benefit plans subject to Title I of ERISA, those plans having been established and maintained by IBEW Local 98, as follows:

Count	Report Date	Cash earnings	Amount stolen
39	August 2002	\$43,723	\$17,979
40	September 2002	\$11,665	\$4,748
41	October 2002	\$16,847	\$6,857
42	November 2002	\$9,227	\$3,755
43	December 2002	\$125,876	\$51,232
44	January 2003	\$107,538	\$43,768
45	February 2003	\$13,312	\$5,418
46	March 2003	\$12,727	\$5,180

Count	Report Date	Cash earnings	Amount stolen
47	April 2003	\$15,140	\$6,162
48	May 2003	\$12,986	\$5,285
49	July 2003	\$100,035	\$42,545
50	August 2003	\$41,667	\$17,721
51	September 2003	\$22,125	\$9,410
52	October 2003	\$135,010	\$57,420
53	November 2003	\$99,788	\$42,440
54	December 2003	\$81,506	\$34,665
55	January 2004	\$20,983	\$8,924
56	February 2004	\$26,042	\$11,076
57	March 2004	\$39,107	\$16,632
58	April 2004	\$37,791	\$16,073
59	May 2004	\$109,254	\$46,466
60	June 2004	\$54,384	\$24,152
61	July 2004	\$45,126	\$20,040
62	August 2004	\$105,003	\$46,632
63	September 2004	\$56,847	\$25,246
64	October 2004	\$30,730	\$13,647
65	November 2004	\$55,702	\$24,737
66	December 2004	\$125,606	\$55,782
67	January 2005	\$14,986	\$6,655
68	February 2005	\$40,566	\$18,015
69	March 2005	\$58,051	\$25,780
70	April 2005	\$40,251	\$17,875
71	May 2005	\$38,351	\$17,032
72	June 2005	\$38,851	\$17,254

Count	Report Date	Cash earnings	Amount stolen
73	July 2005	\$80,611	\$35,799
74	August 2005	\$118,600	\$52,670
75	September 2005	\$20,449	\$9,081
76	October 2005	\$12,262	\$5,446

All in violation of Title 18, United States Code, Sections 664 and 2.

COUNT SEVENTY-SEVEN

(UNLAWFUL PAYMENT TO A UNION OFFICIAL)

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. The allegations set forth in paragraphs 1 through 3 of Counts One through Thirty-Eight are realleged here.

2. IBEW Local 98 Official #1 was responsible for the management and supervision of the field activities and business office, and for conducting the daily business of IBEW Local 98. IBEW Local 98 Official #1 was a representative of IBEW Local 98 members, including IBEW Local 98 members employed by Dougherty Electric.

**SECTION 186 OF THE LABOR MANAGEMENT
RELATIONS ACT OF 1947 ("TAFT-HARTLEY ACT")**

3. Section 186 of the Labor Management Relations Act of 1947 ("LMRA" or "Taft-Hartley Act"), 29 U.S.C. §§ 147 to 187, restricts financial transactions between an employer and a labor organization's representatives or employees.

4. Section 186(a)(2) and (d)(2) makes it unlawful for an employer, or a person acting in the interest of an employer, to pay, lend or deliver, or agree to pay, lend or deliver, any money or other thing of value to an officer or employee of a labor organization which represents, seeks to represent or would admit to membership such employer's employees who are employed in an industry affecting interstate commerce. Employers are permitted to engage in financial transactions with an officer or employee of a labor organization only if the transaction was "at the prevailing market price in the regular course of business."

SALE OF ALLEN DRIVE, UNIT 101A, N. WILDWOOD, NEW JERSEY

5. In or about April 1999, defendant DONALD DOUGHERTY, JR. purchased a condominium at Allen Drive, Unit 101A, North Wildwood, New Jersey. Between 1999 and December 2001, defendant DOUGHERTY made home improvements that consisted of painting, new rugs and furniture, and recessed lighting.

6. In or about 2003, defendant DONALD DOUGHERTY, JR. agreed to sell Allen Drive, Unit 101A to IBEW Local 98 Official #1.

7. In anticipation of the sale of the condominium to IBEW Local 98 Official #1, defendant DONALD DOUGHERTY, JR. directed employees of Dougherty Electric to perform major upgrades. These upgrades included: multiple flat panel televisions, including a 42-inch plasma television; installation of a home audio-video system and a surround sound system; a gas furnace; an air conditioning condenser; a gas hot water heater, coils and insulation; and, other electrical work in the kitchen, including recessed lighting. Three Dougherty Electric employees performed the work over a three to four-day period in May 2003. Afterwards, a Dougherty Electric employee returned to the condominium to show IBEW Local 98 Official #1, who was taking possession of the condominium over the Memorial Day weekend, how to work the electronic equipment.

8. In addition to the work conducted by Dougherty Electric employees, defendant DONALD DOUGHERTY, JR. hired other contractors to install new hardwood flooring and other kitchen upgrades.

9. At the direction of defendant DONALD DOUGHERTY, JR., the cost of the materials installed into the condominium by Dougherty Electric employees, estimated to be

somewhere between \$20,000 and \$30,000, and the Dougherty Electric employees' labor costs were "buried" in other electrical contracts Dougherty Electric was performing at the time.

10. In or about August 2003, IBEW Local 98 Official #1 obtained an appraisal of Allen Drive, Unit 101A, N. Wildwood, New Jersey in order to obtain a bank loan. The appraisal valued the condominium at \$230,000. The appraisal did not include the renovation work described in paragraphs 7 and 8.

11. On or about October 17, 2003, defendant DONALD DOUGHERTY, JR. sold Allen Drive, Unit 101A to IBEW Local 98 Official #1 for \$206,000, a price that defendant DOUGHERTY knew was below the prevailing market price and did not include the value of the renovation work described in paragraphs 7 and 8.

12. On or about October 17, 2003, in the Eastern District of Pennsylvania and the District of New Jersey, defendant

DONALD DOUGHERTY, JR.,

being an employer, that is, owner and operator of Dougherty Electric which had employees in an industry affecting commerce who were represented by IBEW Local 98, willfully paid, lent, and delivered a thing of value, that is, the sale of Allen Drive, Unit 101A, N. Wildwood, New Jersey, at least approximately \$20,000 below the prevailing market price to IBEW Local 98 Official #1, an officer of a labor organization, that is, IBEW Local 98, whose organization represented employees of Dougherty Electric.

In violation of Title 29, United States Code, Section 186(a)(2) and (d)(2).

COUNT SEVENTY-EIGHT

(UNLAWFUL PAYMENT TO A UNION OFFICIAL)

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. The allegations set forth in paragraphs 1 through 3 of Counts One through Thirty-Eight and paragraphs 2 through 4 of Count Seventy-Seven are realleged here.

**RENOVATION WORK OF IBEW
LOCAL 98 OFFICIAL #1's PERSONAL RESIDENCE**

2. In or about August or September 2004, defendant DONALD DOUGHERTY, JR. began making renovations on IBEW Local 98 Official #1's Moyamensing Avenue rowhouse. In or about September 2004, defendant DOUGHERTY and Dougherty Electric obtained a permit from the City of Philadelphia Department of Licenses & Inspections to perform electrical work at the rowhouse.

3. After defendant DONALD DOUGHERTY, JR. began the renovation work, defendant DOUGHERTY asked Fastrack Construction, Inc. ("FTC") to assist in making the renovations. Defendant DOUGHERTY advised FTC that they were to conduct a total renovation of the rowhouse, including one of the side walls, the rear wall, and all of the interior walls.

4. With the exception of finishing touches, defendant DONALD DOUGHERTY, JR. and FTC completed the renovation work in or about March 2005.

5. FTC billed IBEW Local 98 Official #1 as the renovation work progressed. On or about August 1, 2005, FTC submitted a final bill to IBEW Local 98 Official #1 that showed that the cost of FTC's work was \$310,000 and that a balance of \$250,000 was owed.

6. On or about December 1, 2005, FTC received a \$50,000 payment from IBEW Local 98 Official #1, leaving a balance of \$200,000.
7. On or about November 10, 2006, FTC received a \$150,000 payment from IBEW Local 98 Official #1, leaving a balance of \$50,000.
8. From the completion of their work in or about March 2005 through in or about June 2006, Dougherty Electric did not prepare or submit an invoice to IBEW Local 98 Official #1 for the work Dougherty Electric performed at IBEW Local 98 Official #1's rowhouse, which work was in addition to the work that FTC performed.
9. In approximately June 2006, after defendant DONALD DOUGHERTY, JR.'s personal residence and Dougherty Electric's office were searched by federal law enforcement officers pursuant to a court-authorized search warrant, and IBEW Local 98 Official #1 requested an invoice for the work, defendant DOUGHERTY submitted an invoice to IBEW Local 98 Official #1 for approximately \$115,600 for building materials, labor, and related costs incurred by Dougherty Electric in connection with the renovation work on IBEW Local 98 Official #1's rowhouse.
10. Beginning in or about August 2004 and continuing through at least June 2006, in Philadelphia, in the Eastern District of Pennsylvania, defendant
DONALD DOUGHERTY, JR.,
being an employer, that is, owner and operator of Dougherty Electric, which had employees in an industry affecting commerce who were represented by IBEW Local 98, willfully paid, lent, and delivered a thing of value, that is, approximately \$115,600 in building materials, labor, and related costs in connection with the renovation of the personal residence at Moyamensing

Avenue, Philadelphia, Pennsylvania, belonging to IBEW Local 98 Official #1, an officer of a labor organization, that is, IBEW Local 98, which represented employees of Dougherty Electric.

In violation of Title 29, United States Code, Sections 186(a)(2) and (d)(2).

COUNT SEVENTY-NINE

(FALSE STATEMENT RELATING TO HEALTH CARE MATTERS)

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. The allegations set forth in paragraphs 1 through 3 of Counts One through Thirty-Eight are realleged here.
2. In or about October 2004, C.F., a relative of IBEW Local 98 Official #2, began her employment with Pennsport Civic Association ("PCA"), a neighborhood organization presided over by IBEW Local 98 Official #1, in his capacity as PCA President.
3. B.M., an employee of PCA sought to obtain health care coverage solely for C.F. because, with the exception of C.F., all of the officers and other employees of PCA received health care coverage from other employers or through the health care coverage of other family members.
4. IBEW Local 98 Official #1, in his capacity as PCA's President, asked defendant DONALD DOUGHERTY, JR. to include C.F. on Dougherty Electric's health coverage plan.
5. Dougherty Electric's employees received health care coverage through Independence Blue Cross. At the direction of defendant DONALD DOUGHERTY, JR., Independence Blue Cross enrollment forms were prepared which falsely identified C.F. as an employee of Dougherty Electric and were submitted to Independence Blue Cross to begin her health care coverage.

6. From in or about October 2004 to in or about October 2005, Independence Blue Cross provided health care coverage for and paid claims on behalf of C.F.

7. From in or about October 2004 through in or about October 2005, Dougherty Electric received checks from PCA, signed by IBEW Local 98 Official #1, in his capacity as PCA President, and/or a PCA Boardmember, to subsidize Dougherty Electric for C.F.'s health care coverage.

8. In or about October 2004, in Philadelphia, in the Eastern District of Pennsylvania, defendant

DONALD DOUGHERTY, JR.,

in a matter involving a health care benefit program, that is, Independence Blue Cross health care insurance, knowingly and willfully made, and aided, abetted, and willfully caused the making of, a materially false and fraudulent writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and entry in connection with the delivery of and payments for health care benefits, items and services, in that defendant DOUGHERTY falsely represented and caused to be falsely represented to Independence Blue Cross that C.F. was an employee of Dougherty Electric in connection with C.F.'s application for health care coverage, when, as defendant DOUGHERTY well knew, C.F. was an employee of Pennsport Civic Association and not an employee of Dougherty Electric.

In violation of Title 18, United States Code, Sections 1035 and 2.

COUNT EIGHTY

(BANK BRIBERY)

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations set forth in paragraph 1 of Counts One through Thirty-Eight are realleged here.

2. Bank Official was the Senior Vice-President of NOVA Savings Bank (“NSB”), a financial institution, the deposits of which were insured by the Federal Deposit Insurance Corporation, located at 1535 Locust Street, Philadelphia, Pennsylvania. Bank Official’s responsibilities included the initiation and management of NSB’s portfolio for commercial and residential loans, including loans obtained by defendant DONALD DOUGHERTY, JR.

3. At a time when defendant DONALD DOUGHERTY, JR. had a low-credit score and was offering his creditors settlement on outstanding debts, Bank Official assisted defendant DONALD DOUGHERTY, JR. in obtaining the following loans: a \$475,000 loan in June 2003 for defendant DOUGHERTY to finance the construction and furnishing of his personal residence; a \$735,000 loan in February 2003 for property located at 35 South 25th Street, Sea Isle City, New Jersey; a \$675,000 loan in December 2003; a \$300,000 loan in June 2004 for defendant DOUGHERTY to finance commercial property; a \$500,000 line of credit in October 2004; and, a \$2,700,000 loan in October 2005 for the construction of eight townhomes.

4. Between in or about November 2003 through in or about August 2005, defendant DONALD DOUGHERTY, JR. directed Dougherty Electric employees to perform electrical and plumbing work at Bank Official’s Voorhees, New Jersey residence. Defendant

DOUGHERTY did not bill for or receive from Bank Official the cost of the supplies or the labor which totaled approximately \$9,476.74.

5. In or about January 2005, defendant DONALD DOUGHERTY, JR. provided Bank Official with four Super Bowl tickets and accommodations for four guests at an Amelia Island, Florida condominium valued at approximately \$8,535.64.

6. Between in or about November 2003 to in or about June 2005, in the Eastern District of Pennsylvania and elsewhere, defendant

DONALD J. DOUGHERTY, JR.,

corruptly gave, offered, and promised something of value, that is, electrical services, sports tickets, and lodging, with a value totaling approximately \$18,012.38, to Bank Official, an officer of NOVA Savings Bank, with the intent to influence and reward Bank Official in connection with loans obtained from NOVA Savings Bank.

In violation of Title 18, United States Code, Section 215(a)(1).

COUNTS EIGHTY-ONE THROUGH NINETY-SEVEN

(TAX EVASION)

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. The allegations set forth in paragraphs 1, 10 and 11 of Counts One through Thirty-Eight are realleged here.

APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE

2. The Internal Revenue Code and regulations required employers to withhold from employees' paychecks and pay to the Internal Revenue Service ("IRS") certain payroll taxes, including Federal Income Tax Withholding ("FITW") and the Federal Insurance Contributions Act ("FICA") taxes as follows:

- a. Employers were required to withhold FITW on wages of employees and pay the money withheld to the IRS;
- b. FICA contributions were made up of four components: the employee's and employer's equal shares of 6.2% for Social Security and 1.45% for Medicare taxes. An employer was required to withhold the employee's share and contribute it together with the equal employer's share, a total of 15.30% of wages, to the IRS;
- c. Employers were required to file a quarterly combined FITW and FICA tax return on an Employer's Quarterly Tax Return, IRS Form 941;
- d. Employers were required to issue to each employee and file with the IRS an IRS Form W-2 reporting all wages paid, and all FITW and FICA taxes withheld.

DOUGHERTY'S ILLEGAL CASH PAYROLL SCHEME

4. Between at least January 2001 through October 2005, defendant DONALD DOUGHERTY, JR. maintained an "under the table" cash payroll for himself and his employees that amounted to approximately \$2,659,120 and willfully did not report the cash earnings to the IRS.

5. Defendant DONALD DOUGHERTY, JR. also willfully did not withhold any federal payroll taxes, including FITW and FICA taxes, or any state or local taxes from the earnings that were paid to defendant DOUGHERTY and Dougherty Electric's employees in cash.

6. By willfully failing to report to the IRS his substantial regular wages and his employees' overtime and regular wages, defendant DONALD DOUGHERTY, JR. caused Dougherty Electric to avoid the payment of approximately \$805,698 in FITW and FICA taxes.

7. Between at least January 2001 and October 2005, by willfully failing to report to the IRS his substantial regular wages and his employees' overtime and regular wages, and overtime wages paid to employees, defendant DONALD DOUGHERTY, JR. also caused to be prepared and filed numerous false and fraudulent Employer's Quarterly Federal Tax Returns, IRS Forms 941, and Wage and Tax Statements, IRS Forms W-2, which under-reported taxable income by more than \$2.5 million.

8. On or about the following dates, in Philadelphia, in the Eastern District of Pennsylvania, defendant

DONALD DOUGHERTY, JR.

willfully and knowingly attempted to evade and defeat a substantial part of the employer's federal payroll tax due and owing by Dougherty Electric for each quarter, by filing and causing to

be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania, a false and fraudulent Form 941 wherein defendant DOUGHERTY falsely understated Dougherty Electric's employer payroll taxes due and owing for each quarter as described below, when, as defendant DOUGHERTY well knew, Dougherty Electric's employer's payroll taxes were the approximate amounts more fully described below:

Count	Form 941 quarter ending	Reported payroll	Cash payroll	Actual payroll	Payroll tax due
81	6/2001	\$598,245	\$109,655	\$707,900	\$33,225
82	9/2001	\$710,360	\$194,067	\$904,427	\$58,802
83	12/2001	\$741,996	\$64,088	\$806,084	\$19,418
84	9/2002	\$2,696,088	\$55,388	\$2,751,476	\$16,782
85	12/2002	\$1,447,557	\$157,612	\$1,605,169	\$47,757
86	3/2003	\$611,338	\$138,747	\$750,085	\$42,040
87	6/2003	\$1,126,073	\$44,552	\$1,170,625	\$13,499
88	9/2003	\$977,934	\$167,711	\$1,145,645	\$50,817
89	12/2003	\$870,466	\$334,672	\$1,205,138	\$101,406
90	3/2004	\$879,201	\$113,308	\$992,509	\$34,317
91	6/2004	\$827,145	\$222,206	\$1,049,351	\$67,329
92	9/2004	\$993,305	\$221,698	\$1,215,003	\$67,175
93	12/2004	\$877,728	\$224,628	\$1,102,356	\$68,062
94	3/2005	\$969,660	\$124,604	\$1,094,264	\$37,755
95	6/2005	\$1,131,495	\$125,592	\$1,257,087	\$38,055
96	9/2005	\$793,571	\$229,230	\$1,022,801	\$69,457
97	12/2005	\$869,821	\$15,041	\$884,862	\$4,557

All in violation of Title 26, United States Code, Section 7201.

COUNTS NINETY-EIGHT THROUGH ONE HUNDRED

(FILING FALSE AND FRAUDULENT INCOME TAX RETURNS)

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. The allegations set forth in paragraphs 1, 10 and 11 of Counts One through Thirty-Eight are realleged here.

2. Dougherty Electric was an incorporated entity which defendant DONALD DOUGHERTY, JR. elected to be taxed under Subchapter S of the Internal Revenue Code so that taxable items would pass through to defendant DOUGHERTY to report on his U.S. Individual Income Tax Return.

3. Defendant DONALD DOUGHERTY, JR. and his wife, D.D., filed joint U.S. Individual Income Tax Returns.

4. The U.S. Individual Income Tax Returns filed by defendant DONALD DOUGHERTY, JR. included the standard warning: "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete."

UNDISCLOSED INCOME

5. On tax returns filed by defendant DONALD DOUGHERTY, JR. for tax years 2002, 2003, and 2004, defendant DOUGHERTY did not include the cash that he received as part of the illegal cash payroll scheme that defendant DOUGHERTY implemented for himself and other Dougherty Electric employees as his personal income.

6. On tax returns filed by defendant DONALD DOUGHERTY, JR. for tax years 2002, 2003, and 2004, defendant DOUGHERTY did not include approximately \$572,625 of the approximately \$675,624 that Dougherty Electric received from IBEW Local 98's Job Recovery Fund as personal income. IBEW Local 98's Job Recovery Fund was designed to subsidize electrical contractors who are parties to collective bargaining agreements with the union when they compete against non-union electrical contractors on bids for jobs. During the period 2002 through 2004, Dougherty Electric received approximately \$672,625 in Job Recovery Fund monies from IBEW Local 98, which were authorized by IBEW Local 98 Official #1, for the purported purpose of offsetting price costs to remain competitive with non-union companies. At the direction of defendant DOUGHERTY, checks from IBEW Local 98's Job Recovery Fund were handled in the following manner:

a. Defendant DONALD DOUGHERTY, JR. either gave or had a Dougherty Electric employee pick up Job Recovery Fund checks and directed Dougherty Electric employees to deposit the checks into one of Dougherty Electric's bank accounts. Afterwards, Dougherty Electric employees were directed by defendant DOUGHERTY to withdraw the proceeds as cash or obtain a bank check for defendant DOUGHERTY's personal use. For example, Job Recovery Fund check number 1339, dated March 8, 2002, in the amount of \$40,000 was deposited into Dougherty Electric's St. Edmond's Federal Savings Bank account on or about April 22, 2002. The same day, a \$43,045.50 transfer was made from Dougherty Electric's account to defendant DOUGHERTY's personal account at St. Edmond's Federal Savings Bank. With those funds, a St. Edmond's bank check was issued to Tweeter, a retailer of high-end audio and video systems, for \$43,045.50 for an entertainment system installed at

defendant DOUGHERTY's personal residence in Sea Isle City, NJ. Job Recovery Fund check number 1380, dated October 11, 2002, in the amount of \$10,000, was converted into a St. Edmond's bank check number 20405 for \$10,000 to the architect for fees incurred for designing defendant DOUGHERTY's personal residence in Philadelphia, Pennsylvania.

b. Defendant DONALD DOUGHERTY, JR. directed Dougherty Electric employees not to record the Job Recovery Fund monies on Dougherty Electric's books. Only on three occasions were Job Recovery Fund checks, totaling approximately \$145,000, recorded as income in Dougherty Electric's books; the remaining checks were unreported personal income of defendant DOUGHERTY.

ILLEGAL BUSINESS DEDUCTIONS

7. On tax returns filed by defendant DONALD DOUGHERTY, JR. for tax years 2002, 2003, 2004, and 2005, defendant DOUGHERTY disguised personal expenses as business expenses so that these expenses would not appear as income to defendant DOUGHERTY in the following manner:

a. During the period 2002 through 2004, defendant DONALD DOUGHERTY, JR. constructed his personal residence located on Pierce Street, in Philadelphia, Pennsylvania for approximately \$2.5 million. Defendant DOUGHERTY purchased eight adjacent lots on Pierce Street and constructed a single-family residence with a two car garage and in-ground swimming pool. The majority of the costs related to the purchase of the properties, construction, and furnishing of his residence were paid by Dougherty Electric and deducted as business expenses.

b. During the period 2002 and 2003, defendant DONALD DOUGHERTY, JR. constructed a condominium located on West Pine Avenue, in North Wildwood, New Jersey. A majority of the construction costs were paid for by Dougherty Electric and were deducted as business expenses.

c. During the period 2002 through 2004, defendant DONALD DOUGHERTY, JR. purchased a condominium on South 25th Street, in Sea Isle City, New Jersey for \$975,000. Defendant DOUGHERTY made and caused to be made several renovations to the condominium, including new tile floors, carpeting, painting, a home entertainment system, and bathroom and kitchen renovations. Most of the work was completed by Dougherty Electric employees, and the costs were paid by Dougherty Electric. Dougherty Electric also paid for and expensed a large amount of the furnishings. All of the expenses were deducted as Dougherty Electric business expenses, rather than being treated as personal expenses and income to defendant DOUGHERTY. In or about June 2004, defendant DOUGHERTY sold the South 25th Street condominium for \$1,700,000, and, on his 2004 tax return, defendant DOUGHERTY treated the condominium as personal property, rather than an asset of Dougherty Electric.

d. During the 2003 tax year, defendant DONALD DOUGHERTY, JR. deducted \$90,000 incurred by Dougherty Electric in improvements made to defendant DOUGHERTY 's Allen Drive, Unit 101A, N. Wildwood, New Jersey condominium as business expenses. Some of the improvements made to the condominium included new hardwood flooring, recessed lighting, a new HVAC system, paint, and a home audio-video surround sound system that were installed in anticipation of defendant DOUGHERTY selling the condominium to IBEW Local 98 Official #1.

e. During the 2004 and 2005 tax years, defendant DONALD DOUGHERTY, JR. and employees of Dougherty Electric, acting under the direction of defendant DOUGHERTY, provided renovation and electrical work at the residence of IBEW Local 98 Official #1 on Moyamensing Avenue, in Philadelphia, Pennsylvania. Dougherty Electric incurred material and labor costs totaling approximately \$115,670, but no invoices or bills were forwarded to IBEW Local 98 Official #1 and no payments from IBEW Local 98 Official #1 were recorded on Dougherty Electric's financial records as an account payable during this time period. A bill was not forwarded to IBEW Local 98 Official #1 until sometime after defendant DOUGHERTY's residence and Dougherty Electric's business office were searched by federal law enforcement officers pursuant to a court-authorized search warrant in 2006. No payments from IBEW Local 98 Official #1 were recorded on Dougherty Electric's financial records. The building, materials and labor costs were deducted as business expenses.

f. Defendant DONALD DOUGHERTY, JR. also deducted a \$16,000 Rolex watch, expensive clothing, daycare for defendant DOUGHERTY's son, and plastic surgery for a member of DOUGHERTY's family as business expenses.

8. On or about the following dates, in Philadelphia, in the Eastern District of Pennsylvania, defendant

DONALD DOUGHERTY, JR.,

a resident of Philadelphia, willfully made and subscribed a United States Individual Income Tax Return, Form 1040, for defendant DOUGHERTY and his spouse, D.D., which were verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which income tax return defendant DOUGHERTY did not believe to be true

and correct as to every material matter in that the return under-reported the total income of defendant DOUGHERTY and his spouse, in the approximate amounts listed below:

Count	Form 1040	Date Filed	Omitted Income	Income Reported
98	2002	04/15/03	\$814,490	\$249,679
99	2003	04/15/04	\$1,396,625	\$328,725
100	2004	04/15/05	\$274,885	\$83,638

All in violation of Title 26, United States Code, Section 7206(1).

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 664 and 1027, as set forth in Counts One through Seventy-Six of this indictment, defendant

DONALD DOUGHERTY, JR.

shall forfeit to the United States of America any property that constitutes or is derived from gross proceeds traceable to the commission of such offenses, including, but not limited to, the sum of \$1,067,534:

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Section 982(a).

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 29, United States Code, Section 186, set forth in Counts Seventy-Seven and Seventy-Eight of this indictment, defendant

DONALD DOUGHERTY, JR.

shall forfeit to the United States of America any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such offenses, including, but not limited to, the sum of \$135,600:

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other

property of the defendant(s) up to the value of the property subject to forfeiture.

All pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 981(a)(1)(C).

A TRUE BILL:

GRAND JURY FOREPERSON

Patrick L. Meehan
First Assistant U.S. Attorney
For **PATRICK L. MEEHAN**
UNITED STATES ATTORNEY

Exhibit B

Judgment entered in United States v. Donald Dougherty, Jr.,
Crim. No. 07-361-1 (E.D. Pa.), ECF Doc. No. 114.

UNITED STATES DISTRICT COURT

Eastern

District of

Pennsylvania

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

DONALD DOUGHERTY, JR.

Case Number: 07-361-1

USM Number: 62436-066

Eric W. Sitarchuk, Esquire

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 through 76 and 78 through 100.

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1027 & 2	False statements - ERISA, aiding and abetting	June 2006	1 through 38
18:664 & 2	Theft of employee benefits plans - ERISA	June 2006	39 through 76
29:186 (a)(2) and (d)(2)	Unlawful payment to a union official	June 2006	78
18:1035 & 2	False statements relating to health care matters, aiding and abetting	June 2006	79
18:215 (a)(1)	Bank bribery	June 2006	80
26:7201	Tax evasion	June 2006	81 through 97
26:7206 (1)	Filing false and fraudulent tax returns	June 2006	98 through 100

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) 77 is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 17, 2008

Date of Imposition of Judgment

Gene E.K. Pratter
Signature of Judge

GENE E.K. PRATTER, USDJ

Name and Title of Judge

December 22, 2008
Date

DEFENDANT: DONALD DOUGHERTY, JR
CASE NUMBER: 07-361-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 months on each of counts 1 through 76, 78 through 97 and 98 through 100, all such terms to run concurrently.

The court makes the following recommendations to the Bureau of Prisons:
Defendant be designated to FCI-Fort Dix, where he can participate in an alcohol treatment program.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

- a _____ a. p.m on _____
- as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

The Defendant shall surrender for service of sentence no sooner than January 15, 2008, nor any later than January 31, 2008.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DONALD DOUGHERTY, JR.
CASE NUMBER: 07-361

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

5 years. This term consists of 3 years on each of Counts 1 through 76, 78, 79, and 81 through 97, a term of 5 years on Count 80, and terms of 1 year on each of Counts 98 through 100, all such terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court’s determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant’s criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant’s compliance with such notification requirement.

DEFENDANT: DONALD DOUGHERTY, JR.
CASE NUMBER: 07-361

ADDITIONAL SUPERVISED RELEASE TERMS

The Defendant shall refrain from the use of alcohol and the illegal possession and/or use of drugs and he shall submit to testing to ensure compliance. It is further ordered that the defendant shall submit to evaluation and treatment as directed by the U.S. Probation Office. The defendant shall abide by the rules of any program and remain in treatment until satisfactorily discharged with the approval of the U.S. Probation Office.

The Defendant shall participate in a mental health program for evaluation and/or treatment as directed by the U.S. Probation Office. The defendant shall remain in treatment until satisfactorily discharged and with the approval of the U.S. Probation Office.

The Defendant shall provide the U.S. Probation Office with full disclosure of his financial records to include yearly income tax returns upon the request of the U.S. Probation Office. The defendant shall cooperate with the probation officer in the investigation of his financial dealings and shall provide truthful monthly statements of his income.

The Defendant is prohibited from incurring any new credit charges or opening additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with a payment schedule for any fine or restitution obligation. The defendant shall not encumber or liquidate interest in any assets unless it is in direct service of the fine or restitution obligation or otherwise has the express approval of the Court.

The Defendant is to fully cooperate with the Internal Revenue Service by filing all delinquent or amended returns and by timely filing all future returns that come due during the period of supervision. The defendant is to properly report all correct taxable income and claim only allowable expenses on those returns. The defendant is to provide all appropriate documentation in support of said returns. Upon request, the defendant is to furnish the Internal Revenue Service with information pertaining to all assets and liabilities, and the defendant is to fully cooperate by paying all taxes, interest and penalties due, and otherwise comply with the tax laws of the United States of America.

While the Defendant is on supervised release, he shall serve 100 hours of community service each year by working at an organization to be determined by the Defendant in consultation with the Probation Officer such as Habitat for Humanity, Project Home or The Ronald McDonald House where he can use his skills as an electrician. Defendant must inform the people that he will come in contact with at the community service organization that he is there because he committed a crime and his service is part of his sentence.

DEFENDANT: DONALD DOUGHERTY, JR
 CASE NUMBER: 07-361

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 9,900.00	\$ 0.00	\$ 2,306,541.00

The determination of restitution is deferred _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
I.R.S Attn: MPU, Stop 151 (restitution) P.O. Box 47-421 Doraville, Georgia 30362	\$1,633,471.00	\$1,633,471.00	
William T. Josem, Esq. Cleary & Josem, LLP Counsel to IBEW Local 98 Benefits Fund One Liberty Place, 51st Fl. 1650 Market St. Philadelphia, PA 19103 OR IBEW Local 98 1701 Spring Garden Street Philadelphia, PA 19130	\$673,070.00	\$673,070.00	
TOTALS	\$ <u>2306541</u>	\$ <u>2306541</u>	

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

Interest waived as to IBEW but restitution to IRS includes interest through date of sentencing. Interest to IRS shall not continue to accrue due to inability to pay.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DONALD DOUGHERTY, JR.
CASE NUMBER: 07-361

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ 2,316,441.00 due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
 - \$9,900.00 Special Assessment due immediately
 - \$2,306,541.00 restitution due immediately. It is recommended that the Defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program and Defendant pay a minimum payment of \$25.00 per calendar quarter towards the restitution. Any balances remaining on the restitution shall be paid at a rate of \$750.00 per month, without interest, beginning 60 days after the Defendant is released from the custody of the U.S. Bureau of Prisons.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Exhibit C

Plea Agreement of Donald Dougherty, Jr.,
United States v. Donald Dougherty, Jr.,
Crim. No. 07-361-1 (E.D. Pa.), ECF Doc. No. 103, pgs. 13-21

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL NO. 07-361
 :
 DONALD DOUGHERTY, JR. :

GUILTY PLEA AGREEMENT

Pursuant to Federal Rule of Criminal Procedure 11, the government, the defendant, and the defendant's counsel enter into the following guilty plea agreement. Any reference to the United States or the government in this agreement shall mean the Office of the United States Attorney for the Eastern District of Pennsylvania.

1. The defendant agrees to plead guilty to count 78 of the indictment, charging unlawful payment to a union official, in violation of 29 U.S.C. § 186. On April 15, 2008, the defendant entered guilty pleas to (1) making false statements in documents required by Title I of the Employment Retirement Income Security Act of 1974 (ERISA), in violation of 18 U.S.C. § 1027 (Counts 1-38); (2) embezzlement, theft, unlawful abstraction, and conversion to his own use of moneys, funds, securities, premiums, credits, property and other assets of employee benefit plans subject to ERISA, in violation of 18 U.S.C. § 664 (Counts 39-76); (3) making a false statement, representation, writing or document entry relating to a health care plan, in violation of 18 U.S.C. § 1035 (Count 79); (4) bank bribery, in violation of 18 U.S.C. § 215(a)(1) (Count 80); (6) tax evasion, in violation of 26 U.S.C. § 7201 (Counts 81-97); and (7) filing false and fraudulent tax returns, in violation of 26 U.S.C. § 7206(1) (Counts 98-100). The provisions of this plea agreement apply to all additional counts of conviction. The defendant further acknowledges his waiver of rights, as set forth in the attachment to this agreement.

2. The defendant agrees to pay the special victims/witness assessment in the amount of \$100 before the time of sentencing and shall provide a receipt from the Clerk to the government before sentencing as proof of this payment.

3. The defendant agrees to pay a fine within the guideline range. The defendant further agrees that forfeiture, restitution, fine, assessment, tax, interest or other payments in this case do not constitute extraordinary acceptance of responsibility or provide any basis to seek a downward departure or variance from the applicable Sentencing Guidelines range.

4. Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

5. At the time of sentencing, the government will:

- a. Move to dismiss Count 77 of the Indictment.
- b. Recommend a sentence at the low end of the Sentencing Guideline range of 41 to 51 months incarceration, which range will be the position of the government, and make whatever sentencing recommendation as to fines, forfeiture, restitution and other matters which the government deems appropriate.
- c. Comment on the evidence and circumstances of the case; bring to the Court's attention all facts relevant to sentencing including evidence relating to dismissed counts, if any, and to the character and any criminal conduct of the defendant; address the Court regarding the nature and seriousness of the offense; respond

factually to questions raised by the Court; correct factual inaccuracies in the presentence report or sentencing record; and rebut any statement of facts made by or on behalf of the defendant at sentencing.

- d. Nothing in this agreement shall limit the government in its comments in, and responses to, any post-sentencing matters.

6. The defendant understands, agrees and has had explained to him by counsel that the Court may impose the following statutory maximum sentence on Count 78: five years imprisonment, three years supervised release, a \$250,000 fine, and a \$100 special assessment.

The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by up to 5 years per count of conviction in the case of Class A felonies, 3 years per count of conviction in the case of Class B felonies, 2 years per count of conviction in the case of Class C and D felonies, and 1 year per count of conviction in the case of Class E felonies and misdemeanors. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

7. The defendant may not withdraw his plea because the Court declines to follow any recommendation, motion or stipulation by the parties to this agreement. No one has promised or guaranteed to the defendant what sentence the Court will impose.

8. Pursuant to USSG § 6B1.4, the parties enter into the following stipulations under the Sentencing Guidelines Manual effective November 1, 2007. It is understood and agreed that: (1) these stipulations are not binding upon either the Probation Department or the Court; and (2) the Court may make factual and legal determinations that differ from these stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed. The parties agree and stipulate that the applicable sentencing guideline range is calculated as follows:

- (a) The government agrees and stipulates that the defendant's final offense level for count 78 and all of the counts to which the defendant previously pleaded guilty is level 25. The defendant understands that this is the government's position. The defendant reserves the right to argue for a lower offense level guideline calculation concerning the individual counts of conviction and the manner in which they are grouped. The defendant reserves the right to seek a downward variance and/or departure from the Sentencing Guidelines range determined by the Court.
- (b) The parties agree and stipulate that the total loss, should all of the offenses of conviction be grouped together, is greater than \$1 million and less than \$2.5 million.
- (c) The parties agree and stipulate that, as of the date of this agreement, the defendant has demonstrated acceptance of responsibility for his offense making the defendant eligible for a 2-level downward adjustment under U.S.S.G. § 3E1.1(a).

(d) The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, resulting in a 1-level downward adjustment under U.S.S.G. § 3E1.1(b).

9. In exchange for the undertakings made by the government in entering this plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, including the counts to which the defendant previously pled guilty, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law. This waiver is not intended to bar the assertion of constitutional claims that the relevant case law holds cannot be waived.

- a. Notwithstanding the waiver provision above, if the government appeals from the sentence, then the defendant may file a direct appeal of his sentence.
- b. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal but may raise only claims that:
 - (1) the defendant's sentence on any count of conviction exceeds the statutory maximum for that count as set forth

above;

- (2) the sentencing judge erroneously departed upward pursuant to the Sentencing Guidelines; and/or
- (3) the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 543 U.S. 220 (2005), imposed an unreasonable sentence above the final Sentencing Guideline range determined by the Court.

If the defendant does appeal pursuant to this paragraph, no issue may be presented by the defendant on appeal other than those described in this paragraph.

The defendant also waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

10. The defendant agrees to cooperate fully with the Internal Revenue Service as follows:

- a. The defendant agrees to pay restitution as directed by the Court to the Internal Revenue Service in an amount to be determined by the Internal Revenue Service. Unless directed otherwise, restitution payments will be sent to the Internal Revenue Service, Attn: MPU, Stop 151 (Restitution), PO Box 47-421, Doraville, GA 30362.
- b. The defendant agrees to pay all remaining taxes, interest and

- penalties, as determined by the IRS to be due and owing within the period of probation/supervised release. The defendant further agrees to pay all state and local taxes due and owing for these years within the period of probation/supervised release.
- c. Prior to sentencing, the defendant will properly execute and deliver to the IRS Examination Division IRS Form 4549 or IRS Form 870 and/or file amended tax returns for tax years 2002 to 2004.
 - d. Prior to sentencing, the defendant will make a full financial disclosure to the IRS.
 - e. Prior to sentencing, the defendant agrees to provide the IRS with all requested documents and information for the purpose of a civil audit.
 - f. The defendant agrees that he will sign any IRS forms deemed necessary by the IRS to enable the IRS to make an immediate assessment of the taxes and interest that he agrees to pay as restitution in subparagraph a.
 - g. The defendant agrees to sign IRS Form 8821, Tax Information Authorization, at any time that it is requested until the termination of his probation/supervised release.
 - h. The defendant further agrees not to file any claims for refund of taxes, penalties and interest for the years 2002 through 2004 or for any other amounts paid pursuant to this agreement.
 - i. Defendant agrees that subparagraphs a through i of this paragraph

are appropriate conditions of probation/supervised release.

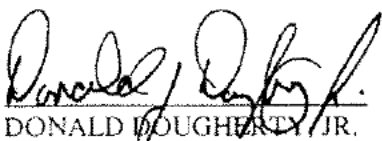
- j. Defendant agrees that he will make no objection to the entry of an order under Fed.R.Crim.P. 6(e) permitting the IRS Criminal Investigation Division to disclose to the IRS Examination and Collection Divisions (for purposes of a civil audit) all of the documents obtained, and the IRS reports produced, during the criminal investigation, whether or not such documents or reports are considered to be grand jury material within the meaning of Rule 6(e).
- k. Nothing in this agreement shall limit the Internal Revenue Service in its collection of any taxes, penalties or interest due from the defendant. Defendant agrees that this agreement, or any judgment, order, release, or satisfaction issued in connection with this agreement, will not satisfy, settle, or compromise the defendant's obligation to pay the balance of any remaining civil tax liabilities, including tax, interest, and penalties.

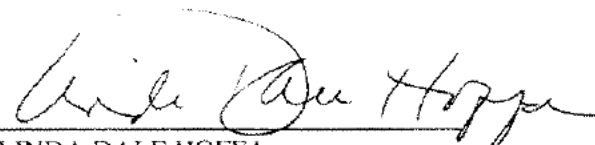
11. The defendant agrees to pay all restitution due and owing to the employee benefit plans of Local 98, International Brotherhood of Electrical Workers, in an amount to be determined by the Court at sentencing, and therefore the government agrees not to pursue forfeiture as described in the notices of forfeiture in the indictment.


12. The defendant is satisfied with the legal representation provided by the defendant's lawyer; the defendant and this lawyer have fully discussed this plea agreement; and the defendant is agreeing to plead guilty because the defendant admits that he is guilty.


13. It is agreed that the parties' guilty plea agreement contains no additional promises, agreements or understandings other than those set forth in this written guilty plea agreement, and that no additional promises, agreements or understandings will be entered into unless in writing and signed by all parties.

PATRICK L. MEEHAN
United States Attorney


DONALD DOUGHERTY, JR.
Defendant


LINDA DALE HOFFA
Chief, Criminal Division

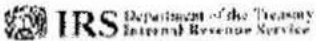

ERIC W. SITARCHUK
NATHAN J. ANDRISANI
Counsel for Defendant


ANITA EVE
PAUL L. GRAY
Assistant United States Attorneys

Date: May 19, 2008

Exhibit D

June 19, 2018 Letter 3010C from IRS to plaintiff.



CINCINNATI OH 45999-0038

In reply refer to: 0241780629
June 19, 2018 LTR 3010C 3
[REDACTED] 201512 02 2
00014762
BODC: LH

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

006558

Type of tax: Employment
Tax period: Sep. 30, 2003
Requested interest abatement amount: \$ 259,019.00
Correspondence received date: Dec. 13, 2017

Dear Taxpayer:

This is in response to your inquiry dated Dec. 07, 2017.

We can't allow your request to remove all of the interest charged on your account for the tax year above. We didn't remove the interest for the following reason:

The interest wasn't an excessive amount, assessed after the expiration of the period of limitation on assessment, or erroneously or illegally assessed.

As for the interest portion of the protective claim you filed on December 7, 2017, IRC 6201(a)(4) states that a criminal restitution based assessment is treated as tax. Accordingly, as with any tax assessment, if the amount is not paid when due, interest will accrue from the due date until paid in full.

Please read the enclosed Publication 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree. If you don't agree with our decision, you have 30 days from the date of this letter to appeal our findings. Send your written protest along with a copy of this letter to this address:

Internal Revenue Service
Attn: Interest Abatement Coordinator
M/S #25G
201 W. Rivercenter Blvd.
Covington, KY 41011

The Interest Abatement Coordinator will forward your written protest to an Appeals office, which will contact you to discuss your interest abatement case.

Interest will continue to accrue if there is any unpaid balance on the account.

If you have questions, you can call the person at the top of the first

0241780029

June 19, 2018 LTR 3010C 3

201512 02 2

00014763

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

page of this letter. If you prefer, you can write to the address at the top of the first page of this letter.

When you write, include this letter and provide in the spaces below, your taxpayer identification number (employer identification number, Social Security number, or individual taxpayer identification number), your telephone number, and the hours we can reach you. Keep a copy of this letter for your records.

Taxpayer identification number: _____

Telephone number () _____ Hours _____

Thank you for your cooperation.

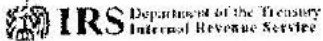
Sincerely yours,

Susan M. O'Neill, Operations Mgr.
Accounts Management Operations 2

Enclosures:
Copy of this letter
Publication 5

Exhibit E

June 19, 2018 Letter 916C from IRS to plaintiff.



CINCINNATI OH 45999-0038

In reply refer to: 0241780029
June 19, 2018 LTR 916C 3
201512 02 2
00008362
80DC: LM

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

006560

Taxpayer identification number: [redacted] 7199
Kind of tax: Employment
Date claims received: Dec. 13, 2017
Tax periods: Dec. 31, 2003 Dec. 31, 2004
Dec. 31, 2005

Dear Taxpayer:

We can't process your claim for the tax periods listed above because your supporting information was not complete. If you have more information you didn't send with this claim, you can file another claim that includes all of your information.

As for the penalty portion of the protective claim you filed on December 7, 2017, please submit a copy of the restitution order for review so a final determination can be made. When doing so, you should file a signed Form 843 for each affected annual period. A determination on the interest portion of your claim is addressed in a separate notice being sent to you.

You can get any of the forms or publications you need from our website at www.irs.gov/formspubs or by calling 1-800-TAX-FORM (1-800-829-3674).

If you have questions, you can call us at 1-800-829-0115.

If you prefer, you can write to us at the address at the top of the first page of this letter.

When you write, include a copy of this letter, and provide your telephone number and the hours we can reach you in the spaces below.

Telephone number () _____ Hours _____

Keep a copy of this letter for your records.

Thank you for your cooperation.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If

0241780029

June 19, 2018 LTR 916C 3
[REDACTED] 201512 02 2
08088363

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2008 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

Low Income Taxpayer Clinics (LITCs) are independent from the IRS. LITCs serve individuals whose income is below a certain level and who need to resolve a tax problem with the IRS. LITCs provide professional representation before the IRS or in court on audits, appeals, tax collection disputes, and other issues for free or for a small fee. For more information and to find an LITC near you, see the LITC page at www.taxpayeradvocate.irs.gov/litemap or IRS Publication 4134, Low Income Taxpayer Clinic List. This Publication is also available by calling the IRS toll-free at 1-800-829-3676 or visiting your local IRS office.

When you write, include a copy of this letter, and provide your telephone number and the hours we can reach you in the spaces below.

Telephone number () _____ Hours _____

Keep a copy of this letter for your records.

Thank you for your cooperation.

Sincerely yours,

Susan M. O'Neill
Susan M. O'Neill, Operations Mgr.
Accounts Management Operations 2

Enclosures:
Copy of this letter
Publication
Envelope
Form 843

Exhibit F

IRS Restitution Information Sheet.

RESTITUTION INFORMATION SHEET

Date: March 18, 2009

TO:

Internal Revenue Service *
Attn: RACS/Misc., STOP 151 (Restitution)
P.O. Box 47-421
Doraville, GA 30362

Clerk of Court
United States District Court
Eastern District of Pennsylvania
601 Market St., Rm. 2609
Philadelphia, PA 19106

United States Probation Office
Eastern District of Pennsylvania
Wm. Green Federal Bldg.
600 Arch St., Rm. 2400
Philadelphia, PA 19106

Financial Litigation Unit
U.S. Attorney's Office
Eastern District of Pennsylvania
615 Chestnut St., Suite 1250
Philadelphia, PA 19106
Contact Number: 215-861-8560

Eric W. Sitarchuk, Esquire

Anita Eve, Assistant United States Attorney

FROM:

Michelle Blank, Special Agent
IRS - Criminal Investigation

RE: USA v. Donald Dougherty, Jr.
Criminal Docket No.: 07-361-1
Eastern District of Pennsylvania

**Only on the copy of this memo to be sent to the IRS in Doraville, Georgia, please print the defendant's social security number on the top of page one.*

1. A judgment and commitment order in the above-entitled case was entered on December 17, 2008, and the defendant Donald Dougherty, Jr. has been ordered to pay restitution to the Internal Revenue Service (IRS) in the total amount of \$1,633,471 including interest. The total amount of restitution consists of the following:

Tax Period	Amount to be Credited to Tax Form 1040	Interest due as of 12/17/2009	
12/31/2002	\$ 249,679.00	\$ 104,929.00	
12/31/2003	\$ 183,184.00	\$ 65,515.00	
12/31/2004	\$ 83,638.00	\$ 24,583.00	
	\$ 516,501.00	\$ 195,027.00	
Employment Tax Form 941			
06/30/2001	\$ 33,225.46	\$ 11,120.00	
09/30/2001	\$ 58,802.30	\$ 11,219.00	
12/31/2001	\$ 19,418.66	\$ 9,139.00	
09/30/2002	\$ 16,782.56	\$ 7,326.58	
12/31/2002	\$ 47,756.44	\$ 7,781.00	
03/30/2003	\$ 42,040.00	\$ 7,545.00	
06/30/2003	\$ 13,499.00	\$ 5,394.00	
09/30/2003	\$ 50,817.00	\$ 7,475.00	
12/31/2003	\$ 101,406.00	\$ 7,457.00	
03/30/2004	\$ 34,317.00	\$ 10,578.00	
06/30/2004	\$ 67,329.00	\$ 10,830.00	
09/30/2004	\$ 67,175.00	\$ 10,802.00	
12/31/2004	\$ 68,062.00	\$ 11,963.00	
03/30/2005	\$ 37,755.00	\$ 10,990.00	
06/30/2005	\$ 38,055.00	\$ 10,340.00	
09/30/2005	\$ 69,457.00	\$ 10,473.00	
12/31/2005	\$ 4,557.00	\$ 1,047.00	
Employment	\$ 770,454.42	\$ 151,479.58	
Income	\$ 516,510.00	\$ 195,027.00	
Totals	\$ 1,286,964.42	\$ 346,506.58	\$ 1,633,471.00

***This interest figure has been calculated by the IRS, under 26 U.S.C. 6601 and/or 6621, as of the anticipated date of sentencing. This interest figure does not include any interest that may accrue under 18 U.S.C. 3612.*

- The defendant has been ordered to pay restitution, due immediately. It was recommended that the Defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program and Defendant pay a minimum of \$25 per calendar quarter towards the restitution. Any balances remaining on the restitution shall be paid at a rate of \$750.00 per month, without interest, beginning 60 days after the Defendant is released from the custody of the U.S. Bureau of Prisons. The amount above includes interest accrued up to the sentencing date. The court determined that the defendant did not have the ability to pay interest, and it was ordered that the restitution to the IRS include interest through the date of sentencing, but shall not continue to accrue.

3. Unless the Director of the Administrative Office of the United States Courts directs the defendant otherwise, the defendant must send all payments made pursuant to the restitution order only to the Clerk of the District Court at the following address:

Clerk of Courts
U.S. District Courts
Eastern District of Pennsylvania
601 Market St., Rm. 2609
Philadelphia, PA 19106

4. The defendant must also send a notice of any payments made pursuant to the restitution order, along with information including the defendant's social security number, the District Court's docket number, the year(s) or period(s) for which restitution has been ordered, and a statement that the payment is being submitted pursuant to the District Court's restitution order, to the IRS at the following address:

Internal Revenue Service
Attn: MPU, STOP 151 (Restitution)
P.O. Box 47-421
Doraville, GA 30362

5. The Clerk's Office has been instructed to send all payments made by defendant pursuant to the court's restitution order to the IRS at the following address:

Internal Revenue Service
Attn: MPU, STOP 151 (Restitution)
P.O. Box 47-421
Doraville, GA 30362

6. The contact information for the Special Agent assigned to this case is as follows:

Special Agent Michelle Blank

600 Arch Street Room 6224
Philadelphia, PA 19106

215-861-1278

7. The contact telephone number for the Financial Litigation Unit of the United States Attorney's Office is:

Financial Litigation Unit
U.S. Attorney's Office
Eastern District of Pennsylvania
615 Chestnut St., Suite 1250
Philadelphia, PA 19106
Contact Number : 215-861-8560

SPECIAL INFORMATION FOR DEFENDANTS

1. The total restitution amount of \$1,633,471 will also accrue interest at the post-judgment interest rate pursuant to 18 U.S.C. § 3612(f), unless interest is waived or deferred by the court. This total restitution amount is also subject to penalties as set forth in 18 U.S.C. § 3612(g).
2. Pursuant to 18 U.S.C. 3664(k), you must notify the District Court and the Attorney General, or his representative, of any material change in your economic circumstances that might affect your ability to pay restitution. The District Court may modify an installment agreement plan to pay restitution either on its own motion or upon request of a party, as the interests of justice may require.
3. You are not entitled to credit with the IRS for any payment sent to an incorrect address or accompanied by incomplete or inaccurate information, unless and until any payment is actually received by the Internal Revenue Service and identified by it as pertaining to your particular liability.

Exhibit G

Claim Disallowance

Adjustment Document

<input checked="" type="checkbox"/> IDRS Adjustment	<input type="checkbox"/> Employee Folder
---	--

Employee Number ██████████	Input Date 09/19/2018
-------------------------------	--------------------------

TIN
██████████7199

DOC Code 54	MFT 01	TX-PRD 200406	NM-CNTRL DOUG
SEQ-NUM 11	BLK 98	CORRESP-DT	INT-CMPTN-DT 2% INT-DT
CASE STS-CD C	IRS-RCVD-DT 08/23/2018	CRTL-CAT MISC	ACTIVITY 54-TAX-ADJ
TCB-DT	CR-INT-TO-DT	RET-PROC-DT	OVERRIDE-CD
RFSCDT	DB-INT-TO-DT	COMP-INT-AMT	

TC 290	AMT .00	TC	AMT	TC	AMT
TC	AMT	TC	AMT	TC	AMT

SRCE-CD	RSN-CDS	— — — 080—	MTH-ERR-CDS	—
HOLD-CD 0	PRT-CD	PSTNG-DELAY-CD	NTC-SUPRS-CD	AMD-CLMS-DT
FLC	TRANS-REG-IND	DMF-AG	SUG-AG	XREF-EIN

CD	AMT	CD	AMT	CD	AMT
CD	AMT	CD	AMT	CD	AMT
CD	AMT	CD	AMT	CD	AMT

Remarks
SD/DISALLOW

DISALLOW

Special Handling Notice

NAME N/C DOUG EIN: [REDACTED] 7199 MFT 01 Year(s)/Period(s) Ended 200406

Technical Support

- Mandatory Review (State nature, per IRM 4414.1)
Sample Review
Systematic
Management Identified
TCMP
Innocent Spouse
Joint Committee Case
Employee Returns

Expedite

- Innocent Spouse
Prompt Assessment Request, Expires
Other Specify

Special Handling/Processing Instructions (IRM 4.4 Exhibit 4.4.1-18, IRM 4414 and IRM 4482.21)

Issue 105C

- Issue Notice of Claim Disallowance
Restricted interest case, IRC section
Send all communications as per power of attorney
Address/Name Change

- Assess/Adjust: Deficiency, claim involved; Penalty; Prepayment Credit
Process: Partial Agreement; Partial Payment
Manual refund: Deceased taxpayer; Hardship case; Innocent Spouse

Other (Specify)

Select para C

Include specific wording, There were no expected changes in current regulation, pending legislation or current litigation relevant to the United States District Court's Judgment dated December 17, 2008 in which it was ordered that criminal monetary penalties restitution of \$1,633,471 be made to the IRS. The Judgment of the Court is clear and there is no Statute or Regulation upon which to base your claim.

Note: This form is to be fastened at the upper left corner of the case file and on top of all other forms except Form 895 and 2644.

Exhibit H

IRS Account Transcript for plaintiff's employment tax for 3rd quarter 2003.



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-12-2020
Response Date: 11-12-2020
Tracking Number: 100586398799

FORM NUMBER: 941
TAX PERIOD: Sep. 30, 2003

TAXPAYER IDENTIFICATION NUMBER: ██████████ 7199

DOUGHERTY ELECTRIC INC
45 E PORTER ST
PHILADELPHIA, PA 19148-4130-450

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: \$0.00
ACCRUED INTEREST: \$0.00 AS OF: Nov. 23, 2020
ACCRUED PENALTY: \$0.00 AS OF: Oct. 31, 2003

ACCOUNT BALANCE PLUS ACCRUALS
(THIS IS NOT A PAYOFF AMOUNT): \$0.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **
TAX PER TAXPAYER: \$267,631.08

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Oct. 31, 2003
PROCESSED DATE Dec. 01, 2003

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	200347	12-01-2003	\$267,631.08
n/a	08135-314-16153-3			
650	Federal tax deposit		07-09-2003	-\$24,704.54
650	Federal tax deposit		07-16-2003	-\$20,514.80
650	Federal tax deposit		07-23-2003	-\$14,855.90
650	Federal tax deposit		07-30-2003	-\$13,246.06
650	Federal tax deposit		08-06-2003	-\$13,978.45
650	Federal tax deposit		08-13-2003	-\$13,661.45
650	Federal tax deposit		08-20-2003	-\$22,708.71
650	Federal tax deposit		08-27-2003	-\$23,823.85

650	Federal tax deposit		09-04-2003	-\$26,809.02
650	Federal tax deposit		09-10-2003	-\$23,242.56
650	Federal tax deposit		09-17-2003	-\$22,871.14
650	Federal tax deposit		09-24-2003	-\$23,578.59
650	Federal tax deposit		10-01-2003	-\$22,384.20
650	Federal tax deposit		10-03-2003	-\$1,251.81
424	Examination Request		08-12-2009	\$0.00
420	Examination of tax return		08-20-2009	\$0.00
320	Penalty for fraud	201008	03-08-2010	\$38,112.75
	10-07-2022			
300	Additional tax assessed by examination		03-08-2010	\$50,817.00
n/a	49147-443-30007-0			
421	Closed examination of tax return		03-08-2010	\$0.00
336	Interest charged for late payment	201008	03-08-2010	\$40,660.25
971	Installment agreement established		04-03-2010	\$0.00
971	No longer in installment agreement status		09-27-2010	\$0.00
971	Collection due process Notice of Intent to Levy -- issued		10-06-2010	\$0.00
582	Lien placed on assets due to balance owed		10-15-2010	\$0.00
971	Issued notice of lien filing and right to Collection Due Process hearing		10-19-2010	\$0.00
971	Collection due process request received timely		10-22-2010	\$0.00
971	Collection due process levy (hearing) request or levy and lien (hearing) request received		10-22-2010	\$0.00
960	Appointed representative		11-29-2010	\$0.00
480	Received offer in compromise		12-08-2010	\$0.00
971	Collection due process (hearing) request withdrawn because you resolved the issue with IRS Collection		12-08-2010	\$0.00
481	Denied offer in compromise		08-30-2012	\$0.00
971	Pending installment agreement		11-28-2012	\$0.00
971	Pending installment agreement		03-15-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
670	Payment		09-08-2015	-\$17,345.00
670	Payment		10-09-2015	-\$25,000.00
706	Credit transferred in from 941 200306		10-09-2015	-\$420.00
706	Credit transferred in from 941 200306		09-08-2015	-\$7,655.00
706	Credit transferred in from 941 200306		08-14-2015	-\$7,541.22
706	Credit transferred in from 1120 201412		10-26-2015	-\$65.50
670	Payment		12-11-2015	-
	Miscellaneous Payment			\$110,246.19
276	Penalty for late payment of tax		01-04-2016	\$12,704.24
196	Interest charged for late payment	201550	01-04-2016	\$25,978.67

670	Payment Miscellaneous Payment		12-28-2015	-\$115.14
196	Interest charged for late payment	201603	02-08-2016	\$115.14
583	Removed lien		01-22-2016	\$0.00
960	Appointed representative		08-31-2016	\$0.00
290	Disallowed claim	201839	10-15-2018	\$0.00
n/a	17154-664-98065-8			
960	Appointed representative		08-20-2020	\$0.00
290	Additional tax assessed	202036	09-21-2020	\$0.00
n/a	29154-644-15294-0			

This Product Contains Sensitive Taxpayer Data

Exhibit I

IRS Account Transcript for plaintiff's employment tax for 4th quarter 2003.



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-12-2020
Response Date: 11-12-2020
Tracking Number: 100586398799

FORM NUMBER: 941
TAX PERIOD: Dec. 31, 2003

TAXPAYER IDENTIFICATION NUMBER: ██████████ 7199

DOUGHERTY ELECTRIC INC
45 E PORTER ST
PHILADELPHIA, PA 19148-4130-450

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: \$0.00
ACCRUED INTEREST: \$0.01 AS OF: Nov. 23, 2020
ACCRUED PENALTY: \$0.00 AS OF: Jan. 31, 2004

ACCOUNT BALANCE PLUS ACCRUALS
(THIS IS NOT A PAYOFF AMOUNT): \$0.01

** INFORMATION FROM THE RETURN OR AS ADJUSTED **
TAX PER TAXPAYER: \$234,701.75

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Jan. 31, 2004
PROCESSED DATE Feb. 23, 2004

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	200406	02-23-2004	\$234,701.75
n/a	08135-035-15959-4			
650	Federal tax deposit		10-08-2003	-\$20,338.03
650	Federal tax deposit		10-16-2003	-\$18,267.00
650	Federal tax deposit		10-22-2003	-\$10,832.24
650	Federal tax deposit		10-29-2003	-\$9,645.83
650	Federal tax deposit		11-05-2003	-\$11,072.66
650	Federal tax deposit		11-13-2003	-\$16,117.93
650	Federal tax deposit		11-19-2003	-\$18,860.71
650	Federal tax deposit		11-26-2003	-\$22,253.36

Appx0233

650	Federal tax deposit		12-03-2003	-\$21,920.00
650	Federal tax deposit		12-10-2003	-\$17,169.12
650	Federal tax deposit		12-17-2003	-\$23,172.24
650	Federal tax deposit		12-24-2003	-\$21,398.52
650	Federal tax deposit		12-29-2003	-\$22,296.20
650	Federal tax deposit		01-05-2004	-\$1,357.91
424	Examination Request		08-12-2009	\$0.00
420	Examination of tax return		08-20-2009	\$0.00
320	Penalty for fraud	201008	03-08-2010	\$76,054.50
	10-07-2022			
300	Additional tax assessed by examination		03-08-2010	\$101,406.00
n/a	49147-443-30008-0			
421	Closed examination of tax return		03-08-2010	\$0.00
336	Interest charged for late payment	201008	03-08-2010	\$78,546.51
971	Installment agreement established		04-03-2010	\$0.00
971	No longer in installment agreement status		09-27-2010	\$0.00
971	Collection due process Notice of Intent to Levy -- issued		10-06-2010	\$0.00
582	Lien placed on assets due to balance owed		10-15-2010	\$0.00
971	Issued notice of lien filing and right to Collection Due Process hearing		10-19-2010	\$0.00
971	Collection due process request received timely		10-22-2010	\$0.00
971	Collection due process levy (hearing) request or levy and lien (hearing) request received		10-22-2010	\$0.00
960	Appointed representative		11-29-2010	\$0.00
480	Received offer in compromise		12-08-2010	\$0.00
971	Collection due process (hearing) request withdrawn because you resolved the issue with IRS Collection		12-08-2010	\$0.00
481	Denied offer in compromise		08-30-2012	\$0.00
971	Pending installment agreement		11-28-2012	\$0.00
971	Pending installment agreement		03-15-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
670	Payment		01-24-2015	-\$15,456.00
672	Removed payment		01-24-2015	\$15,456.00
	941 200212			
670	Payment		11-09-2015	-\$25,000.00
670	Payment		12-11-2015	-
	Miscellaneous Payment			\$308,632.07
276	Penalty for late payment of tax		01-04-2016	\$25,351.50
196	Interest charged for late payment	201550	01-04-2016	\$52,273.56
583	Removed lien		01-22-2016	\$0.00
960	Appointed representative		08-31-2016	\$0.00
290	Disallowed claim	201839	10-15-2018	\$0.00
n/a	17154-664-98066-8			
960	Appointed representative		08-20-2020	\$0.00
290	Additional tax assessed	202036	09-21-2020	\$0.00
n/a	29154-644-15295-0			

This Product Contains Sensitive Taxpayer Data

Exhibit J

IRS Account Transcript for plaintiff's employment tax for 1st quarter 2004.



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-12-2020
Response Date: 11-12-2020
Tracking Number: 100586398799

FORM NUMBER: 941
TAX PERIOD: Mar. 31, 2004

TAXPAYER IDENTIFICATION NUMBER: ██████████ 7199

DOUGHERTY ELECTRIC INC
45 E PORTER ST
PHILADELPHIA, PA 19148-4130-450

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: \$0.00
ACCRUED INTEREST: \$0.00 AS OF: Nov. 23, 2020
ACCRUED PENALTY: \$0.00 AS OF: Apr. 30, 2004

ACCOUNT BALANCE PLUS ACCRUALS
(THIS IS NOT A PAYOFF AMOUNT): \$0.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **
TAX PER TAXPAYER: \$241,985.34

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Apr. 30, 2004
PROCESSED DATE May 17, 2004

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	200418	05-17-2004	\$241,985.34
n/a	35135-113-11860-4			
650	Federal tax deposit		01-14-2004	-\$3,668.77
650	Federal tax deposit		01-22-2004	-\$22,552.22
650	Federal tax deposit		01-28-2004	-\$22,566.18
650	Federal tax deposit		02-04-2004	-\$20,763.14
650	Federal tax deposit		02-11-2004	-\$19,704.89
650	Federal tax deposit		02-19-2004	-\$19,102.19
650	Federal tax deposit		02-25-2004	-\$18,955.32
650	Federal tax deposit		03-03-2004	-\$18,969.66

Appx0237

650	Federal tax deposit		03-10-2004	-\$18,643.06
650	Federal tax deposit		03-17-2004	-\$19,003.80
650	Federal tax deposit		03-24-2004	-\$19,047.81
650	Federal tax deposit		03-31-2004	-\$19,848.71
650	Federal tax deposit		04-07-2004	-\$19,159.59
424	Examination Request		08-12-2009	\$0.00
420	Examination of tax return		08-20-2009	\$0.00
320	Penalty for fraud	201008	03-08-2010	\$25,737.75
	10-07-2022			
300	Additional tax assessed by examination		03-08-2010	\$34,317.00
n/a	49147-443-30009-0			
421	Closed examination of tax return		03-08-2010	\$0.00
336	Interest charged for late payment	201008	03-08-2010	\$25,662.86
971	Installment agreement established		04-03-2010	\$0.00
971	No longer in installment agreement status		09-27-2010	\$0.00
971	Collection due process Notice of Intent to Levy -- issued		10-06-2010	\$0.00
582	Lien placed on assets due to balance owed		10-15-2010	\$0.00
971	Issued notice of lien filing and right to Collection Due Process hearing		10-19-2010	\$0.00
971	Collection due process request received timely		10-22-2010	\$0.00
971	Collection due process levy (hearing) request or levy and lien (hearing) request received		10-22-2010	\$0.00
960	Appointed representative		11-29-2010	\$0.00
480	Received offer in compromise		12-08-2010	\$0.00
971	Collection due process (hearing) request withdrawn because you resolved the issue with IRS Collection		12-08-2010	\$0.00
481	Denied offer in compromise		08-30-2012	\$0.00
971	Pending installment agreement		11-28-2012	\$0.00
971	Pending installment agreement		03-15-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
670	Payment		12-11-2015	-
	Miscellaneous Payment			\$111,821.42
276	Penalty for late payment of tax		01-04-2016	\$8,579.24
196	Interest charged for late payment	201550	01-04-2016	\$17,524.57
583	Removed lien		01-22-2016	\$0.00
960	Appointed representative		08-31-2016	\$0.00
290	Disallowed claim	201839	10-15-2018	\$0.00
n/a	17154-664-98067-8			
197	Reduced or removed interest charged for late payment		10-15-2018	-\$0.01
386	Write-off of credit balance less than \$1		10-15-2018	\$0.01
960	Appointed representative		08-20-2020	\$0.00
290	Additional tax assessed	202036	09-21-2020	\$0.00
n/a	29154-644-15291-0			

This Product Contains Sensitive Taxpayer Data

Exhibit K

IRS Account Transcript for plaintiff's employment tax for 2nd
quarter 2004.



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-12-2020
Response Date: 11-12-2020
Tracking Number: 100586398799

FORM NUMBER: 941
TAX PERIOD: Jun. 30, 2004

TAXPAYER IDENTIFICATION NUMBER: ██████████ 7199

DOUGHERTY ELECTRIC INC
45 E PORTER ST
PHILADELPHIA, PA 19148-4130-450

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: \$0.00
ACCRUED INTEREST: \$0.00 AS OF: Nov. 23, 2020
ACCRUED PENALTY: \$0.00 AS OF: Jul. 31, 2004

ACCOUNT BALANCE PLUS ACCRUALS
(THIS IS NOT A PAYOFF AMOUNT): \$0.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **
TAX PER TAXPAYER: \$228,232.19

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Jul. 31, 2004
PROCESSED DATE Aug. 09, 2004

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	200430	08-09-2004	\$228,232.19
n/a	35135-203-17029-4			
650	Federal tax deposit		04-14-2004	-\$20,054.74
650	Federal tax deposit		04-21-2004	-\$19,971.41
650	Federal tax deposit		04-28-2004	-\$20,331.33
650	Federal tax deposit		05-05-2004	-\$20,331.47
650	Federal tax deposit		05-12-2004	-\$19,111.62
650	Federal tax deposit		05-19-2004	-\$10,370.19
650	Federal tax deposit		05-26-2004	-\$10,420.24
650	Federal tax deposit		06-03-2004	-\$11,342.67

650	Federal tax deposit		06-09-2004	-\$11,766.03
650	Federal tax deposit		06-16-2004	-\$18,914.69
650	Federal tax deposit		06-23-2004	-\$22,224.05
650	Federal tax deposit		06-30-2004	-\$21,998.30
650	Federal tax deposit		07-08-2004	-\$21,395.45
424	Examination Request		08-12-2009	\$0.00
420	Examination of tax return		08-20-2009	\$0.00
320	Penalty for fraud	201008	03-08-2010	\$50,496.75
	10-07-2022			
300	Additional tax assessed by examination		03-08-2010	\$67,329.00
n/a	49147-443-30010-0			
421	Closed examination of tax return		03-08-2010	\$0.00
336	Interest charged for late payment	201008	03-08-2010	\$48,390.22
971	Installment agreement established		04-03-2010	\$0.00
971	No longer in installment agreement status		09-27-2010	\$0.00
971	Collection due process Notice of Intent to Levy -- issued		10-06-2010	\$0.00
582	Lien placed on assets due to balance owed		10-15-2010	\$0.00
971	Issued notice of lien filing and right to Collection Due Process hearing		10-19-2010	\$0.00
971	Collection due process request received timely		10-22-2010	\$0.00
971	Collection due process levy (hearing) request or levy and lien (hearing) request received		10-22-2010	\$0.00
960	Appointed representative		11-29-2010	\$0.00
480	Received offer in compromise		12-08-2010	\$0.00
971	Collection due process (hearing) request withdrawn because you resolved the issue with IRS Collection		12-08-2010	\$0.00
481	Denied offer in compromise		08-30-2012	\$0.00
971	Pending installment agreement		11-28-2012	\$0.00
971	Pending installment agreement		03-15-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
670	Payment		12-11-2015	-
	Miscellaneous Payment			\$217,030.25
276	Penalty for late payment of tax		01-04-2016	\$16,832.24
196	Interest charged for late payment	201550	01-04-2016	\$33,982.04
583	Removed lien		01-22-2016	\$0.00
960	Appointed representative		08-31-2016	\$0.00
290	Disallowed claim	201839	10-15-2018	\$0.00
n/a	17154-664-98068-8			
960	Appointed representative		08-20-2020	\$0.00
290	Additional tax assessed	202036	09-21-2020	\$0.00
n/a	29154-644-15293-0			

This Product Contains Sensitive Taxpayer Data

Exhibit L

IRS Account Transcript for plaintiff's employment tax for 3rd quarter 2004.



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-12-2020
Response Date: 11-12-2020
Tracking Number: 100586398799

FORM NUMBER: 941
TAX PERIOD: Sep. 30, 2004

TAXPAYER IDENTIFICATION NUMBER: ██████████ 7199

DOUGHERTY ELECTRIC INC
45 E PORTER ST
PHILADELPHIA, PA 19148-4130-450

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: \$0.00
ACCRUED INTEREST: \$0.00 AS OF: Nov. 23, 2020
ACCRUED PENALTY: \$0.00 AS OF: Oct. 31, 2004

ACCOUNT BALANCE PLUS ACCRUALS
(THIS IS NOT A PAYOFF AMOUNT): \$0.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **
TAX PER TAXPAYER: \$277,838.22

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Oct. 31, 2004
PROCESSED DATE Nov. 15, 2004

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	200444	11-15-2004	\$277,838.22
n/a	38139-300-47429-4			
650	Federal tax deposit		07-14-2004	-\$20,347.63
650	Federal tax deposit		07-21-2004	-\$18,553.62
650	Federal tax deposit		07-28-2004	-\$21,637.12
650	Federal tax deposit		08-04-2004	-\$21,340.81
650	Federal tax deposit		08-11-2004	-\$20,990.89
650	Federal tax deposit		08-18-2004	-\$21,508.39
650	Federal tax deposit		08-25-2004	-\$21,163.62
650	Federal tax deposit		09-01-2004	-\$22,646.24

650	Federal tax deposit		09-09-2004	-\$23,584.43
650	Federal tax deposit		09-15-2004	-\$21,934.78
650	Federal tax deposit		09-22-2004	-\$19,557.39
650	Federal tax deposit		09-29-2004	-\$22,559.29
650	Federal tax deposit		10-06-2004	-\$22,014.01
424	Examination Request		08-12-2009	\$0.00
420	Examination of tax return		08-20-2009	\$0.00
320	Penalty for fraud	201008	03-08-2010	\$50,381.25
	10-07-2022			
300	Additional tax assessed by examination		03-08-2010	\$67,175.00
n/a	49147-443-30011-0			
421	Closed examination of tax return		03-08-2010	\$0.00
336	Interest charged for late payment	201008	03-08-2010	\$46,481.60
971	Installment agreement established		04-03-2010	\$0.00
971	No longer in installment agreement status		09-27-2010	\$0.00
971	Collection due process Notice of Intent to Levy		10-06-2010	\$0.00
	-- issued			
582	Lien placed on assets due to balance owed		10-15-2010	\$0.00
971	Issued notice of lien filing and right to		10-19-2010	\$0.00
	Collection Due Process hearing			
971	Collection due process request received timely		10-22-2010	\$0.00
971	Collection due process levy (hearing) request		10-22-2010	\$0.00
	or levy and lien (hearing) request received			
960	Appointed representative		11-29-2010	\$0.00
480	Received offer in compromise		12-08-2010	\$0.00
971	Collection due process (hearing) request		12-08-2010	\$0.00
	withdrawn because you resolved the issue with			
	IRS Collection			
481	Denied offer in compromise		08-30-2012	\$0.00
971	Pending installment agreement		11-28-2012	\$0.00
971	Pending installment agreement		03-15-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
670	Payment		12-11-2015	-
	Miscellaneous Payment			\$214,368.34
276	Penalty for late payment of tax		01-04-2016	\$16,793.74
196	Interest charged for late payment	201550	01-04-2016	\$33,536.75
583	Removed lien		01-22-2016	\$0.00
960	Appointed representative		08-31-2016	\$0.00
290	Disallowed claim	201839	10-15-2018	\$0.00
n/a	17154-664-98069-8			
960	Appointed representative		08-20-2020	\$0.00
290	Additional tax assessed	202036	09-21-2020	\$0.00
n/a	29154-644-15292-0			

This Product Contains Sensitive Taxpayer Data

Exhibit M

IRS Account Transcript for plaintiff's employment tax for 4th
quarter 2004.



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-12-2020
Response Date: 11-12-2020
Tracking Number: 100586398799

FORM NUMBER: 941
TAX PERIOD: Dec. 31, 2004

TAXPAYER IDENTIFICATION NUMBER: ██████████ 7199

DOUGHERTY ELECTRIC INC
45 E PORTER ST
PHILADELPHIA, PA 19148-4130-450

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: \$0.00
ACCRUED INTEREST: \$0.00 AS OF: Nov. 23, 2020
ACCRUED PENALTY: \$0.00 AS OF: Jan. 31, 2005

ACCOUNT BALANCE PLUS ACCRUALS
(THIS IS NOT A PAYOFF AMOUNT): \$0.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **
TAX PER TAXPAYER: \$241,643.56

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Jan. 31, 2005
PROCESSED DATE Feb. 21, 2005

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	200506	02-21-2005	\$241,643.56
n/a	35135-024-17515-5			
650	Federal tax deposit		10-14-2004	-\$21,787.45
650	Federal tax deposit		10-20-2004	-\$22,424.00
650	Federal tax deposit		10-27-2004	-\$21,584.92
650	Federal tax deposit		11-03-2004	-\$22,218.79
650	Federal tax deposit		11-10-2004	-\$24,246.89
650	Federal tax deposit		11-17-2004	-\$21,577.43
650	Federal tax deposit		11-24-2004	-\$26,492.55
650	Federal tax deposit		12-01-2004	-\$10,639.49

650	Federal tax deposit		12-08-2004	-\$7,099.95
650	Federal tax deposit		12-15-2004	-\$11,221.24
650	Federal tax deposit		12-22-2004	-\$12,450.48
650	Federal tax deposit		12-29-2004	-\$20,801.08
650	Federal tax deposit		01-05-2005	-\$19,099.29
424	Examination Request		08-12-2009	\$0.00
420	Examination of tax return		08-20-2009	\$0.00
320	Penalty for fraud	201008	03-08-2010	\$51,046.50
	10-07-2022			
300	Additional tax assessed by examination		03-08-2010	\$68,062.00
n/a	49147-443-30012-0			
421	Closed examination of tax return		03-08-2010	\$0.00
336	Interest charged for late payment	201008	03-08-2010	\$45,017.75
971	Installment agreement established		04-03-2010	\$0.00
971	No longer in installment agreement status		09-27-2010	\$0.00
971	Collection due process Notice of Intent to Levy -- issued		10-06-2010	\$0.00
582	Lien placed on assets due to balance owed		10-15-2010	\$0.00
971	Issued notice of lien filing and right to Collection Due Process hearing		10-19-2010	\$0.00
971	Collection due process request received timely		10-22-2010	\$0.00
971	Collection due process levy (hearing) request or levy and lien (hearing) request received		10-22-2010	\$0.00
960	Appointed representative		11-29-2010	\$0.00
480	Received offer in compromise		12-08-2010	\$0.00
971	Collection due process (hearing) request withdrawn because you resolved the issue with IRS Collection		12-08-2010	\$0.00
481	Denied offer in compromise		08-30-2012	\$0.00
971	Pending installment agreement		11-28-2012	\$0.00
971	Pending installment agreement		03-15-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
670	Payment		12-11-2015	-
	Miscellaneous Payment			\$214,696.57
276	Penalty for late payment of tax		01-04-2016	\$17,015.50
196	Interest charged for late payment	201550	01-04-2016	\$33,554.82
583	Removed lien		01-22-2016	\$0.00
960	Appointed representative		08-31-2016	\$0.00
290	Disallowed claim	201839	10-15-2018	\$0.00
n/a	17154-664-98070-8			
960	Appointed representative		08-20-2020	\$0.00
290	Additional tax assessed	202036	09-21-2020	\$0.00
n/a	29154-644-15290-0			

This Product Contains Sensitive Taxpayer Data

Exhibit N

IRS Account Transcript for plaintiff's employment tax for 1st quarter 2005.



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-12-2020
 Response Date: 11-12-2020
 Tracking Number: 100586398799

FORM NUMBER: 941
 TAX PERIOD: Mar. 31, 2005

TAXPAYER IDENTIFICATION NUMBER: ██████████ 7199

DOUGHERTY ELECTRIC INC
 45 E PORTER ST
 PHILADELPHIA, PA 19148-4130-450

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: \$0.00
 ACCRUED INTEREST: \$0.00 AS OF: Nov. 23, 2020
 ACCRUED PENALTY: \$0.00 AS OF: Apr. 30, 2005

ACCOUNT BALANCE PLUS ACCRUALS
 (THIS IS NOT A PAYOFF AMOUNT): \$0.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

TAX PER TAXPAYER: \$271,180.20

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Apr. 30, 2005
 PROCESSED DATE May 16, 2005

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	200518	05-16-2005	\$271,180.20
n/a	35135-111-12140-5			
650	Federal tax deposit		01-12-2005	-\$19,534.82
650	Federal tax deposit		01-21-2005	-\$21,148.32
650	Federal tax deposit		01-26-2005	-\$21,845.25
650	Federal tax deposit		02-02-2005	-\$22,101.03
650	Federal tax deposit		02-09-2005	-\$21,914.36
650	Federal tax deposit		02-16-2005	-\$21,066.07
650	Federal tax deposit		02-24-2005	-\$23,055.41
650	Federal tax deposit		03-02-2005	-\$21,662.84

650	Federal tax deposit		03-09-2005	-\$22,248.43
650	Federal tax deposit		03-11-2005	-\$159.17
650	Federal tax deposit		03-16-2005	-\$17,821.31
650	Federal tax deposit		03-23-2005	-\$12,488.01
650	Federal tax deposit		03-30-2005	-\$23,802.48
650	Federal tax deposit		04-06-2005	-\$22,332.70
424	Examination Request		08-18-2009	\$0.00
420	Examination of tax return		08-27-2009	\$0.00
320	Penalty for fraud	201008	03-08-2010	\$28,316.25
	10-07-2022			
300	Additional tax assessed by examination		03-08-2010	\$37,755.00
n/a	49147-443-30013-0			
421	Closed examination of tax return		03-08-2010	\$0.00
336	Interest charged for late payment	201008	03-08-2010	\$23,794.96
971	Installment agreement established		04-03-2010	\$0.00
971	No longer in installment agreement status		09-27-2010	\$0.00
971	Collection due process Notice of Intent to Levy		10-06-2010	\$0.00
	-- issued			
582	Lien placed on assets due to balance owed		10-15-2010	\$0.00
971	Issued notice of lien filing and right to		10-19-2010	\$0.00
	Collection Due Process hearing			
971	Collection due process request received timely		10-22-2010	\$0.00
971	Collection due process levy (hearing) request		10-22-2010	\$0.00
	or levy and lien (hearing) request received			
960	Appointed representative		11-29-2010	\$0.00
480	Received offer in compromise		12-08-2010	\$0.00
971	Collection due process (hearing) request		12-08-2010	\$0.00
	withdrawn because you resolved the issue with			
	IRS Collection			
481	Denied offer in compromise		08-30-2012	\$0.00
971	Pending installment agreement		11-28-2012	\$0.00
971	Pending installment agreement		03-15-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
670	Payment		12-11-2015	-
	Miscellaneous Payment			\$117,677.67
276	Penalty for late payment of tax		01-04-2016	\$9,438.74
196	Interest charged for late payment	201550	01-04-2016	\$18,372.72
583	Removed lien		01-22-2016	\$0.00
960	Appointed representative		08-31-2016	\$0.00
290	Disallowed claim	201839	10-15-2018	\$0.00
n/a	17154-664-98071-8			
960	Appointed representative		08-20-2020	\$0.00
290	Additional tax assessed	202036	09-21-2020	\$0.00
n/a	29154-644-15289-0			

This Product Contains Sensitive Taxpayer Data

Exhibit O

IRS Account Transcript for plaintiff's employment tax for 2nd quarter 2005.



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-12-2020
Response Date: 11-12-2020
Tracking Number: 100586398799

FORM NUMBER: 941
TAX PERIOD: Jun. 30, 2005

TAXPAYER IDENTIFICATION NUMBER: ██████████ 7199

DOUGHERTY ELECTRIC INC
45 E PORTER ST
PHILADELPHIA, PA 19148-4130-450

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: \$0.00
ACCRUED INTEREST: \$0.01 AS OF: Nov. 23, 2020
ACCRUED PENALTY: \$0.00 AS OF: Jul. 31, 2005

ACCOUNT BALANCE PLUS ACCRUALS
(THIS IS NOT A PAYOFF AMOUNT): \$0.01

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

TAX PER TAXPAYER: \$319,597.24

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Jul. 31, 2005
PROCESSED DATE Aug. 15, 2005

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	200531	08-15-2005	\$319,597.24
n/a	35135-202-17293-5			
650	Federal tax deposit		04-13-2005	-\$24,380.67
650	Federal tax deposit		04-20-2005	-\$24,549.45
650	Federal tax deposit		04-27-2005	-\$23,225.57
650	Federal tax deposit		05-04-2005	-\$23,451.93
650	Federal tax deposit		05-11-2005	-\$25,080.92
650	Federal tax deposit		05-18-2005	-\$26,885.86
650	Federal tax deposit		05-25-2005	-\$25,978.30
650	Federal tax deposit		06-02-2005	-\$22,437.36

650	Federal tax deposit		06-08-2005	-\$25,904.98
650	Federal tax deposit		06-15-2005	-\$21,314.93
650	Federal tax deposit		06-22-2005	-\$26,412.31
650	Federal tax deposit		06-29-2005	-\$24,360.13
650	Federal tax deposit		07-07-2005	-\$25,614.83
424	Examination Request		08-18-2009	\$0.00
420	Examination of tax return		08-27-2009	\$0.00
320	Penalty for fraud	201008	03-08-2010	\$28,541.25
	10-07-2022			
300	Additional tax assessed by examination		03-08-2010	\$38,055.00
n/a	49147-443-30014-0			
421	Closed examination of tax return		03-08-2010	\$0.00
336	Interest charged for late payment	201008	03-08-2010	\$22,624.61
971	Installment agreement established		04-03-2010	\$0.00
971	No longer in installment agreement status		09-27-2010	\$0.00
971	Collection due process Notice of Intent to Levy -- issued		10-06-2010	\$0.00
582	Lien placed on assets due to balance owed		10-15-2010	\$0.00
971	Issued notice of lien filing and right to Collection Due Process hearing		10-19-2010	\$0.00
971	Collection due process request received timely		10-22-2010	\$0.00
971	Collection due process levy (hearing) request or levy and lien (hearing) request received		10-22-2010	\$0.00
960	Appointed representative		11-29-2010	\$0.00
480	Received offer in compromise		12-08-2010	\$0.00
971	Collection due process (hearing) request withdrawn because you resolved the issue with IRS Collection		12-08-2010	\$0.00
481	Denied offer in compromise		08-30-2012	\$0.00
971	Pending installment agreement		11-28-2012	\$0.00
971	Pending installment agreement		03-15-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
670	Payment		12-11-2015	-
	Miscellaneous Payment			\$116,975.38
276	Penalty for late payment of tax		01-04-2016	\$9,513.74
196	Interest charged for late payment	201550	01-04-2016	\$18,240.78
583	Removed lien		01-01-2016	\$0.00
960	Appointed representative		08-31-2016	\$0.00
290	Disallowed claim	201839	10-15-2018	\$0.00
n/a	17154-664-98072-8			
960	Appointed representative		08-20-2020	\$0.00
290	Additional tax assessed	202036	09-21-2020	\$0.00
n/a	29154-644-15288-0			

This Product Contains Sensitive Taxpayer Data

Exhibit P

IRS Account Transcript for plaintiff's employment tax for 3rd quarter 2005.



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-12-2020
Response Date: 11-12-2020
Tracking Number: 100586398799

FORM NUMBER: 941
TAX PERIOD: Sep. 30, 2005

TAXPAYER IDENTIFICATION NUMBER: ██████████ 7199

DOUGHERTY ELECTRIC INC
45 E PORTER ST
PHILADELPHIA, PA 19148-4130-450

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: \$0.00
ACCRUED INTEREST: \$0.00 AS OF: Nov. 23, 2020
ACCRUED PENALTY: \$0.00 AS OF: Oct. 31, 2005

ACCOUNT BALANCE PLUS ACCRUALS
(THIS IS NOT A PAYOFF AMOUNT): \$0.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **
TAX PER TAXPAYER: \$225,120.36

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Oct. 31, 2005
PROCESSED DATE Nov. 14, 2005

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	200544	11-14-2005	\$225,120.36
n/a	35135-294-17485-5			
650	Federal tax deposit		07-13-2005	-\$25,158.61
650	Federal tax deposit		07-20-2005	-\$19,891.19
650	Federal tax deposit		07-27-2005	-\$24,460.09
650	Federal tax deposit		08-03-2005	-\$25,215.19
650	Federal tax deposit		08-10-2005	-\$22,239.12
650	Federal tax deposit		08-17-2005	-\$12,669.86
650	Federal tax deposit		08-24-2005	-\$8,554.48
650	Federal tax deposit		08-31-2005	-\$8,622.61

650	Federal tax deposit		09-08-2005	-\$8,805.37
650	Federal tax deposit		09-14-2005	-\$17,467.56
650	Federal tax deposit		09-21-2005	-\$15,902.10
650	Federal tax deposit		09-28-2005	-\$18,200.32
650	Federal tax deposit		10-05-2005	-\$17,933.86
424	Examination Request		08-18-2009	\$0.00
420	Examination of tax return		08-27-2009	\$0.00
320	Penalty for fraud	201008	03-08-2010	\$52,092.25
	10-07-2022			
300	Additional tax assessed by examination		03-08-2010	\$69,457.00
n/a	49147-443-30015-0			
421	Closed examination of tax return		03-08-2010	\$0.00
336	Interest charged for late payment	201008	03-08-2010	\$38,713.49
971	Installment agreement established		04-03-2010	\$0.00
971	No longer in installment agreement status		09-27-2010	\$0.00
971	Collection due process Notice of Intent to Levy -- issued		10-06-2010	\$0.00
582	Lien placed on assets due to balance owed		10-15-2010	\$0.00
971	Issued notice of lien filing and right to Collection Due Process hearing		10-19-2010	\$0.00
971	Collection due process request received timely		10-22-2010	\$0.00
971	Collection due process levy (hearing) request or levy and lien (hearing) request received		10-22-2010	\$0.00
960	Appointed representative		11-29-2010	\$0.00
480	Received offer in compromise		12-08-2010	\$0.00
971	Collection due process (hearing) request withdrawn because you resolved the issue with IRS Collection		12-08-2010	\$0.00
481	Denied offer in compromise		08-30-2012	\$0.00
670	Payment		11-28-2012	-\$5,131.10
	Miscellaneous Payment			
971	Pending installment agreement		11-28-2012	\$0.00
670	Payment		01-04-2013	-\$25,000.00
	Miscellaneous Payment			
670	Payment		02-01-2013	-\$25,000.00
	Miscellaneous Payment			
670	Payment		02-28-2013	-\$25,000.00
	Miscellaneous Payment			
971	Pending installment agreement		03-15-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
971	Installment agreement established		09-06-2013	\$0.00
670	Payment		12-11-2015	-
	Miscellaneous Payment			\$123,056.48
276	Penalty for late payment of tax		01-04-2016	\$17,364.24
196	Interest charged for late payment	201550	01-04-2016	\$25,560.60
583	Removed lien		01-01-2016	\$0.00

960	Appointed representative		08-31-2016	\$0.00
290	Disallowed claim	201839	10-15-2018	\$0.00
n/a	17154-664-98073-8			
960	Appointed representative		08-20-2020	\$0.00
290	Additional tax assessed	202036	09-21-2020	\$0.00
n/a	29154-644-15287-0			

This Product Contains Sensitive Taxpayer Data

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUGHERTY ELECTRIC INC.,)	
)	
Plaintiff,	)	Civil Action No. 20-1254 T
vs.	)	Sr. Judge Loren A. Smith
)	
UNITED STATES OF AMERICA,)	
)	
Defendant)	

DECLARATION OF IAN M. COMISKY

I, Ian M. Comisky, hereby affirm and attest that the following statements are true, to the best of my knowledge and belief:

1. I am the attorney for Plaintiff Dougherty Electric Inc. in this action and am acquainted with the facts in this case and have personal knowledge of the matter set forth in this affidavit.

2. I make this affidavit in opposition to the Defendant’s motion to dismiss for lack of subject-matter jurisdiction and failure to state a claim.

3. Attached hereto as the indicated exhibits are true and correct copies of the following documents, which were obtained by Plaintiff through a request under the Freedom of Information Act for Dougherty Electric, Inc.’s files in the possession of the Internal Revenue Service (“IRS”):

Plaintiff’s Exhibit A – IRS Form 4666 for Plaintiff’s calendar years 2001 – 2005.

Plaintiff’s Exhibit B – IRS Forms 4668 for Plaintiff’s quarterly periods in 2001 – 2005.

Plaintiff’s Exhibit C – IRS Form 4666 for Plaintiff’s quarterly periods beginning first quarter 2001 to fourth quarter 2004.

Plaintiff’s Exhibit D – IRS Form Penalty Approval for Plaintiff.

4. Attached hereto as the indicated exhibits are true and correct copies of the following documents, which were issued by the IRS to Plaintiff's attorney, Ian M. Comisky:

Plaintiff's Exhibit E – IRS Letters 105C dated September 28, 2018.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed in Philadelphia, Pennsylvania, this 22nd of September 2021.

s/ Ian M. Comisky
Ian M. Comisky

Exhibit A

Exhibit B

Form 4668 (Rev. April 1994)	Department of the Treasury — Internal Revenue Service <h2 style="margin: 0;">Employment Tax Examination Changes Report</h2>	Return form number 941
Name and Address of Employer Dougherty Electric, Inc. 142-50 Morris Street Philadelphia, PA 19148	Employer Identification number [REDACTED] 7199	Calendar year 2001
Total tax plus penalty, or (decrease) in tax \$ 195,031.25		Last quarter of this examination 04/2005

Examination discussed with (Name and title)	<input checked="" type="checkbox"/> Agreed (Subject to acceptance by the District Director) <input type="checkbox"/> Unagreed.
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	IRS Ref.	(a) Applicable Rate	(b) 1st Quarter	(c) 2nd Quarter	(d) 3rd Quarter	(e) 4th Quarter
1. Social security and Medicare wage adjustment subject to tax under IRC 3101 and 3111	004	12.40%		\$109,655.00	\$194,067.00	\$64,088.00
	073	02.90%		\$109,655.00	\$194,067.00	\$64,088.00
2. Social security and Medicare wage adjustment subject to tax under IRC 3509(a)	079					
	079					
3. Social security and Medicare wage adjustment subject to tax under IRC 3509(b)	079					
	079					
4. Social security and Medicare tip adjustment subject to tax under IRC 3101 and 3111	005					
	073					
5. Income tax withholding wage adjustment subject to tax under IRC 3402		15.00%		\$109,655.00	\$194,067.00	\$64,088.00
6. Income tax withholding wage adjustment subject to tax under IRC 3509	079					
Payments subject to backup withholding under IRC 3406						
8. Adjustment to social security tax and Medicare tax	185					
9. Adjustment to income tax withholding	184					
10. Total social security and Medicare tax (Lines 1, 2, 3, 4 x rates) plus/minus Line 8	007			\$16,777.21	\$29,692.25	\$9,805.46
11. Total income tax withholding (Lines 5, 6 x rate)	003			\$16,448.25	\$29,110.05	\$9,613.20
12. Total backup withholding (Line 7 x rate)	008					
13. Delinquent tax or increase (decrease) in tax (Lines 10 and 11) or backup withholding (Line 12)				\$33,225.46	\$58,802.30	\$19,418.66
14. Penalty code section 6651						
15. Penalty code section 6656						
16. Penalty code section				\$24,919.10	\$44,101.73	\$14,564.00
17. Maximum tax available for abatement under IRC 3402(d)						

Under IRC sections 6051 and 6071 and the regulations under those sections, you are required to furnish W-2c (Statement of Corrected Income Tax Amounts) on or before the last day of January _____ to each of the _____ employees whose wages are adjusted by this report. Also, you are required to file the original of these statements with Form W-3c (Transmittal of Corrected Income and Tax Statements) by the last day of February _____. IRC 6721 and 6722 provide penalties for failure to file and failure to furnish these statements by the required dates. Please file these statements with:

Employer's signature	Group Number E:1557	District Central	Date December 16, 2008
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Form 4668 (Rev. April 1994)	Department of the Treasury — Internal Revenue Service Employment Tax Examination Changes Report	Return form number 941
Name and Address of Employer Perry Electric, Inc. 1450 Morris Street Philadelphia, PA 19148	Employer Identification number [REDACTED] 7199	Calendar year 2002
	Total tax plus penalty, or (decrease) in tax \$ 113,100.75	Last quarter of this examination 04/2005
Examination discussed with (Name and title)	<input checked="" type="checkbox"/> Agreed (Subject to acceptance by the District Director) <input type="checkbox"/> Unagreed	

	IRS Ref.	(a) Applicable Rate	(b) 1st Quarter	(c) 2nd Quarter	(d) 3rd Quarter	(e) 4th Quarter
1. Social security and Medicare wage adjustment subject to tax under IRC 3101 and 3111	004	12.40%			\$55,388.00	\$157,612.00
	073	02.90%			\$55,388.00	\$157,612.00
2. Social security and Medicare wage adjustment subject to tax under IRC 3509(a)	079					
	079					
3. Social security and Medicare wage adjustment subject to tax under IRC 3509(b)	079					
	079					
4. Social security and Medicare tip adjustment subject to tax under IRC 3101 and 3111	005					
	073					
5. Income tax withholding wage adjustment subject to tax under IRC 3402		15.00%			\$55,388.00	\$157,612.00
6. Income tax withholding wage adjustment subject to tax under IRC 3509	079					
7. Payments subject to backup withholding under IRC 3406						
Adjustment to social security tax and Medicare tax	185					
9. Adjustment to income tax withholding	184					
10. Total social security and Medicare tax (Lines 1, 2, 3, 4 x rates) plus/minus Line 8	007				\$8,474.36	\$24,114.64
11. Total income tax withholding (Lines 5, 6 x rate)	003				\$8,308.20	\$23,641.80
12. Total backup withholding (Line 7 x rate)	008					
13. Delinquent tax or increase (decrease) in tax (Lines 10 and 11) or backup withholding (Line 12)					\$16,782.56	\$47,756.44
14. Penalty code section 6651						
15. Penalty code section 6656						
16. Penalty code section					\$12,586.92	\$35,817.33
17. Maximum tax available for abatement under IRC 3402(d)						

Under IRC sections 6051 and 6071 and the regulations under those sections, you are required to furnish W-2c (Statement of Corrected Income Tax Amounts) on or before the last day of January _____ to each of the _____ employees whose wages are adjusted by this report. Also, you are required to file the original of these statements with Form W-3c (Transmittal of Corrected Income and Tax Statements) by the last day of February _____. IRC 6721 and 6722 provide penalties for failure to file and failure to furnish these statements by the required dates. Please file these statements with:

Examiner's signature	Group Number E:1557	District Central	Date December 16, 2008
----------------------	------------------------	---------------------	---------------------------

Form 4668 (Rev. April 1994)	Department of the Treasury — Internal Revenue Service Employment Tax Examination Changes Report	Return form number 941
Name and Address of Employer Sherty Electric, Inc. 142-50 Morris Street Philadelphia, PA 19148	Employer Identification number ██████████7199	Calendar year 2003
	Total tax plus penalty, or (decrease) in tax \$ 363,583.50	Last quarter of this examination 04/2005
Examination discussed with (Name and title)	<input checked="" type="checkbox"/> Agreed (Subject to acceptance by the District Director) <input type="checkbox"/> Unagreed	

	IRS Ref.	(a) Applicable Rate	(b) 1st Quarter	(c) 2nd Quarter	(d) 3rd Quarter	(e) 4th Quarter
1. Social security and Medicare wage adjustment subject to tax under IRC 3101 and 3111	004	12.40%	\$138,747.00	\$44,552.00	\$167,711.00	\$334,672.00
	073	02.90%	\$138,747.00	\$44,552.00	\$167,711.00	\$334,672.00
2. Social security and Medicare wage adjustment subject to tax under IRC 3509(a)	079					
	079					
3. Social security and Medicare wage adjustment subject to tax under IRC 3509(b)	079					
	079					
4. Social security and Medicare tip adjustment subject to tax under IRC 3101 and 3111	005					
	073					
5. Income tax withholding wage adjustment subject to tax under IRC 3402		15.00%	\$138,747.00	\$44,552.00	\$167,711.00	\$334,672.00
6. Income tax withholding wage adjustment subject to tax under IRC 3509	079					
7. Payments subject to backup withholding under IRC 3406						
8. Adjustment to social security tax and Medicare tax	185					
9. Adjustment to income tax withholding	184					
10. Total social security and Medicare tax (Lines 1, 2, 3, 4 x rates) plus/minus Line 8	007		\$21,228.00	\$6,816.00	\$25,660.00	\$51,205.00
11. Total income tax withholding (Lines 5, 6 x rate)	003		\$20,812.00	\$6,683.00	\$25,157.00	\$50,201.00
12. Total backup withholding (Line 7 x rate)	008					
13. Delinquent tax or increase (decrease) in tax (Lines 10 and 11) or backup withholding (Line 12)			\$42,040.00	\$13,499.00	\$50,817.00	\$101,406.00
14. Penalty code section 6651						
15. Penalty code section 6656						
16. Penalty code section			\$31,530.00	\$10,124.25	\$38,112.75	\$76,054.50
17. Maximum tax available for abatement under IRC 3402(d)						

Under IRC sections 6051 and 6071 and the regulations under those sections, you are required to furnish W-2c (Statement of Corrected Income Tax Amounts) on or before the last day of January _____ to each of the _____ employees whose wages are adjusted by this report. Also, you are required to file the original of these statements with Form W-3c (Transmittal of Corrected Income and Tax Statements) by the last day of February _____. IRC 6721 and 6722 provide penalties for failure to file and failure to furnish these statements by the required dates. Please file these statements with:

Employer's signature	Group Number E:1557	District Central	Date December 16, 2008
----------------------	------------------------	---------------------	---------------------------

Form 4668 (Rev. April 1994)	Department of the Treasury — Internal Revenue Service Employment Tax Examination Changes Report	Return form number 941
Name and Address of Employer Dougherty Electric, Inc. 142-50 Morris Street Philadelphia, PA 19148	Employer Identification number ██████████ 7199	Calendar year 2004
	Total tax plus penalty, or (decrease) in tax \$ 414,545.25	Last quarter of this examination 04/2005
Examination discussed with (Name and title)	<input checked="" type="checkbox"/> Agreed (Subject to acceptance by the District Director) <input type="checkbox"/> Unagreed	

	IRS Ref.	(a) Applicable Rate	(b) 1st Quarter	(c) 2nd Quarter	(d) 3rd Quarter	(e) 4th Quarter
1. Social security and Medicare wage adjustment subject to tax under IRC 3101 and 3111	004	12.40%	\$113,308.00	\$222,206.00	\$221,698.00	\$224,628.00
	073	02.90%	\$113,308.00	\$222,206.00	\$221,698.00	\$224,628.00
2. Social security and Medicare wage adjustment subject to tax under IRC 3509(a)	079					
	079					
3. Social security and Medicare wage adjustment subject to tax under IRC 3509(b)	079					
	079					
4. Social security and Medicare tip adjustment subject to tax under IRC 3101 and 3111	005					
	073					
5. Income tax withholding wage adjustment subject to tax under IRC 3402		15.00%	\$113,308.00	\$222,206.00	\$221,698.00	\$224,628.00
6. Income tax withholding wage adjustment subject to tax under IRC 3509	079					
Payments subject to backup withholding under IRC 3406						
8. Adjustment to social security tax and Medicare tax	185					
9. Adjustment to income tax withholding	184					
10. Total social security and Medicare tax (Lines 1, 2, 3, 4 x rates) plus/minus Line 8	007		\$17,336.00	\$33,998.00	\$33,920.00	\$34,368.00
11. Total income tax withholding (Lines 5, 6 x rate)	003		\$16,981.00	\$33,331.00	\$33,255.00	\$33,694.00
12. Total backup withholding (Line 7 x rate)	008					
13. Delinquent tax or increase (decrease) in tax (Lines 10 and 11) or backup withholding (Line 12)			\$34,317.00	\$67,329.00	\$67,175.00	\$68,062.00
14. Penalty code section 6651						
15. Penalty code section 6656						
16. Penalty code section			\$25,737.75	\$50,496.75	\$50,381.25	\$51,046.50
17. Maximum tax available for abatement under IRC 3402(d)						

Under IRC sections 6051 and 6071 and the regulations under those sections, you are required to furnish W-2c (Statement of Corrected Income Tax Amounts) on or before the last day of January _____ to each of the _____ employees whose wages are adjusted by this report. Also, you are required to file the original of these statements with Form W-3c (Transmittal of Corrected Income and Tax Statements) by the last day of February _____. IRC 6721 and 6722 provide penalties for failure to file and failure to furnish these statements by the required dates. Please file these statements with:

Examiner's signature	Group Number E:1557	District Central	Date December 16, 2008
----------------------	------------------------	---------------------	---------------------------

Form 4668 (Rev. April 1994)	Department of the Treasury — Internal Revenue Service Employment Tax Examination Changes Report	Return form number 941
---------------------------------------	---	---------------------------

Name and Address of Employer gherty Electric, Inc. 2-50 Morris Street Philadelphia, PA 19148	Employer Identification number [REDACTED] 7199	Calendar year 2005
Total tax plus penalty, or (decrease) in tax \$ 262,191.50		Last quarter of this examination 04/2005

Examination discussed with (Name and title)	<input checked="" type="checkbox"/> Agreed (Subject to acceptance by the District Director) <input type="checkbox"/> Unagreed
---	--

	IRS Ref.	(a) Applicable Rate	(b) 1st Quarter	(c) 2nd Quarter	(d) 3rd Quarter	(e) 4th Quarter
1. Social security and Medicare wage adjustment subject to tax under IRC 3101 and 3111.	004	12.40%	\$124,604.00	\$125,592.00	\$229,230.00	\$15,041.00
	073	02.90%	\$124,604.00	\$125,592.00	\$229,230.00	\$15,041.00
2. Social security and Medicare wage adjustment subject to tax under IRC 3509(a)	079					
	079					
3. Social security and Medicare wage adjustment subject to tax under IRC 3509(b)	079					
	079					
4. Social security and Medicare tip adjustment subject to tax under IRC 3101 and 3111	005					
	073					
5. Income tax withholding wage adjustment subject to tax under IRC 3402		15.00%	\$124,604.00	\$125,592.00	\$229,230.00	\$15,041.00
6. Income tax withholding wage adjustment subject to tax under IRC 3509	079					
7. Payments subject to backup withholding under IRC 3406						
Adjustment to social security tax and Medicare tax	185					
9. Adjustment to income tax withholding	184					
10. Total social security and Medicare tax (Lines 1, 2, 3, 4 x rates) plus/minus Line 8	007		\$19,064.00	\$19,216.00	\$35,072.00	\$2,301.00
11. Total income tax withholding (Lines 5, 6 x rate)	003		\$18,691.00	\$18,839.00	\$34,385.00	\$2,256.00
12. Total backup withholding (Line 7 x rate)	008					
13. Delinquent tax or increase (decrease) in tax (Lines 10 and 11) or backup withholding (Line 12)			\$37,755.00	\$38,055.00	\$69,457.00	\$4,557.00
14. Penalty code section 6651						
15. Penalty code section 6656						
16. Penalty code section			\$28,316.25	\$28,541.25	\$52,092.25	\$3,417.75
17. Maximum tax available for abatement under IRC 3402(d)						

Under IRC sections 6051 and 6071 and the regulations under those sections, you are required to furnish W-2c (Statement of Corrected Income Tax Amounts) on or before the last day of January _____ to each of the _____ employees whose wages are adjusted by this report. Also, you are required to file the original of these statements with Form W-3c (Transmittal of Corrected Income and Tax Statements) by the last day of February _____. IRC 6721 and 6722 provide penalties for failure to file and failure to furnish these statements by the required dates. Please file these statements with:

Examiner's signature	Group Number E:1557	District Central	Date December 16, 2008
----------------------	------------------------	---------------------	---------------------------

Exhibit C

Fraud Development Recommendation - Examination

1a. Name, TIN and Location of Taxpayer

Dougherty Electric, Inc. [REDACTED] 7199 Philadelphia, PA
(Taxpayer's Name) (SSN or EIN) (City and State)

2. Basis for Potential Tax Fraud

- a. Omitted Income c. Failure to File or Pay Tax e. False/Altered Documents g. Other (Explain)
 b. False Expenses/Deductions d. Evasion of Payment f. Aiding & Abetting
(Preparer / Promoter)

3. List the indicators of fraud, including supporting evidence, and the method used to compute omitted income (if applicable).

A grand jury investigation found that this flow through entity failed to properly report employees' wages and pay the proper amount of employment taxes.

RAR has been generated and has been signed by taxpayer.

4. Tax Return / Administrative Information

a. Tax Period(s) <small>(yyyy-mm)</small>	b. Tax Return Form	c. Estimated Tax Due to Fraud	d. Source Code	e. Activity Code	f. Project Code
200103 thru 200412	941	620,630.42		289	

5a. Initiator's Name **5b. Title** **5c. Source of Requester**
AIMS Assignee Code Area Territory Group
 K. Kelly R/A 202 12100 E:1557

5d. Telephone Number **5e. Date**
 [REDACTED] Ext. July 28, 2009

6a. Group Manager **6b. Date**
 Lloyd Doletski 8/7/2009

7. FTA Recommendation	All Tax Periods	Specific Tax Periods	FTA Authorization	Date
a. Update to Status 17 ³	<input checked="" type="checkbox"/>	200112 thru 200412	Alan Frevele <small>Digitally signed by Alan Frevele DN: cn=Alan Frevele, c=US Date: 2009.08.10 07:31:49 -0400</small>	8/10/2009
b. Transfer to field for further fraud development ¹	<input type="checkbox"/>			
c. Return to Status 12 or other prior status code ¹	<input type="checkbox"/>			
d. Return to Status 17 (from Status 18)	<input type="checkbox"/>			
e. Assert civil fraud/fraudulent failure to file penalty	<input checked="" type="checkbox"/>	200112 thru 200412	Alan Frevele <small>Digitally signed by Alan Frevele DN: cn=Alan Frevele, c=US Date: 2009.08.10 07:31:49 -0400</small>	8/10/2009
f. Transfer to field for initial fraud development ²	<input type="checkbox"/>			
g. FTA involvement concluded	<input checked="" type="checkbox"/>	200112 thru 200412	Alan Frevele <small>Digitally signed by Alan Frevele DN: cn=Alan Frevele, c=US Date: 2009.08.10 07:31:49 -0400</small>	8/10/2009

¹ FTA involvement concluded.
² Return(s) should not be updated to Status 17. A copy of this form should not be forwarded to the Data Assistant, Fraud Policy & Operations.
³ Request original returns or confirmation of electronic filing.

Case: 24-1458 Document: 46 Page: 183 Filed: 02/12/2025

Appx0269

11/16/1

Name and TIN of Taxpayer

Plan of Action

The case will now close for assessment of the Civil Employment Taxes.

Exhibit D

Taxpayer Name: Dougherty Electric Inc.
TIN: [REDACTED] 7199
Tax Form: 01/941

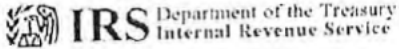
Examiner: Kelly, Ken
Date:

Penalty Approval Form

IRC	Penalty	IRM	Assert Penalty		Reference (Section 500)
			Yes	No	
6651(a)(1)	Failure to File	20.1.2.3			
6651(a)(2)	Failure to Pay	20.1.2.4			
6651(f)	Fraudulent Failure To File, Civil	20.1.2.7			
6654	Estimated Tax – Individual	20.1.3.1.1			
6655	Estimated Tax – Corporate	20.1.3.5			
6662(b)(1)	Negligence	20.1.5.7			
6662(b)(2)	Substantial Understatement	20.1.5.8			
6662(b)	Other Accuracy Related	20.1.5.1			
6662(h)	Gross Valuation Misstatement	20.1.5.9			
6662A	Accuracy Related Penalty on Understatements with Respect to Reportable Transactions (RT)	New			
6663	Fraud	20.1.5.12	X		
6707A	Failure to Include RT Information with Return or Statement	New			
6717	Refusal of Entry	New			
6718	Failure to Display Registration	New			
6719	Failure to Register	New			
6725	Failure to Report Information under Section 4101	New			
Other			Assert Penalty		Reference (Section 500)
			Yes	No	
	Alternative Penalty Position	20.1.5.12.2			
	Abatement of Assessed Penalties	20.1.1.3			
Preparer / Promoter / Material Advisor			Consider Penalty		Reference (Section 500)
			Yes	No	
6694(a)	Preparer Penalties - Negligent	20.1.6.3.5			
6694(b)	Preparer Penalties - Willful	20.1.6.3.5			
6700	Promoting Abusive Tax Shelters	20.1.6.1			
6701	Aiding & Abetting understatement of Tax Liability	20.1.6.1			
6707	Failure to Furnish Information regarding RT	20.10			
6708	Failure to Maintain Lists of Advisees with respect to RT (Formerly Failure to Maintain Lists of Investors in Potentially Abusive Tax Shelters)	20.10			
Reason(s) for Assertions/Non-Assertions of Penalty(s): No approval required on non-assertion cases					
<input type="checkbox"/> No Change or Refund Case					
Group Manager Involvement: (Not Required on Automatic Penalties or Non-Assertion Cases)					
<input checked="" type="checkbox"/> Approved		Group Manager Initials:		[Signature]	
<input type="checkbox"/> Disapproved		Date:		11/17/09	

Case: 24-1458 Document: 46 Page: 186 Filed: 02/12/2025

Exhibit E



CINCINNATI OH 45999-0049

In reply refer to: 0260767987
Sep. 28, 2018 LTR 105C 3
7199 200312 01 2
00001025
BODC: LM

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

003855

Taxpayer identification number: [redacted] 7199
Kind of tax: Business Income
Date of claims received: Aug. 23, 2018
Tax periods: Dec. 31, 2003 Sep. 30, 2003

Dear Taxpayer:

WE COULDN'T ALLOW YOUR CLAIM

We disallowed your claims for credit for the periods listed at the top of this letter.

WHY WE CAN'T ALLOW YOUR CLAIM

There were no expected changes in current regulation, pending legislation or current litigation relevant to the United States District Court's Judgment dated December 17, 2008 in which it was ordered that criminal monetary penalties restitution of \$1,633,471.00 be made to the IRS. The Judgment of the Court is clear and there is no Statute or Regulation upon which to base your claim.

WHAT TO DO IF YOU DISAGREE

You have the right to appeal our decision to disallow your claim. You can represent yourself before Appeals or you can have an attorney, certified public accountant, enrolled agent, or any other person authorized to practice before the IRS represent you. To have someone represent you, attach Form 2848, Power of Attorney and Declaration of Representative, (or similar written power of attorney) to your written statement. If we don't hear from you within 30 days from the date of this letter, we will process your case with the information we have now.

For claims \$25,000 or less, you can request a small dollar case appeal. You must prepare a formal protest for a disallowed claim over \$25,000.

To request a small dollar case appeal:

0260767987
Sep. 28, 2018 LTR 105C 3
7199 200312 01 2
00001026

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

1. Prepare a written statement that you want to appeal to the Office of Appeals.
2. List the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
4. Mail your appeal request to the address at the top of the first page of this letter.

To prepare a formal protest:

1. Prepare a written statement that you want to appeal to the Office of Appeals.
2. List the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
4. Include a detailed statement of facts with names, amounts, locations, etc., to support your reasons for disputing the disallowance.
5. If you know the particular law or authority that supports your position, identify that law or authority by providing a legal citation.
6. Sign the perjury statement below and include it with your written appeal. If your authorized representative prepares the request for an appeal, he or she must sign the statement.
7. Mail your written formal protest to the address at the top of the first page of this letter.

STATEMENT BY INDIVIDUALS OR SOLE PROPRIETORS

"Under penalties of perjury, I declare that the facts present on my written appeal are, to the best of my knowledge and belief, true, correct, and complete."

Signature

Date

Spouse's Signature, if a Joint Return

Date

STATEMENT BY INDIVIDUAL AUTHORIZED TO PRACTICE BEFORE THE IRS

"Under penalty of perjury, I declare that I prepared the written statement and accompanying documents. To the best of my knowledge the protest and accompanying documents are true and correct."

0260767987
Sep. 28, 2018 LTR 105C 3
7199 200312 01 2
00001027

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222



003855

Signature of Representative Enrollment Number Date

If you need forms, schedules or publications to respond to this letter, you can download them at www.irs.gov/formspubs or call 1-800-TAX-FORM (1-800-829-3676).

HOW TO CONTACT US

If you have questions, you can call us toll free at 1-800-829-0115.

If you prefer, you can write to us at the address at the top of the first page of this letter.

When you write, include a copy of this letter, and provide your telephone number and the hours we can reach you in the spaces below.

Telephone number () _____ Hours _____

Keep a copy of this letter for your records.

Thank you for your cooperation.

You can get any of the forms or publications mentioned in this letter on our website at www.irs.gov/formspubs or by calling 800-TAX-FORM (800-829-3676).

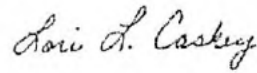
0260767987

Sep. 28, 2018 LTR 105C 3

7199 200312 01 2
00001028

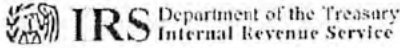
DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

Sincerely yours,



Lori L. Caskey, Director
Campus Examination, Cincinnati

Enclosures:
Copy of this letter
Publication 1
Envelope
Publication 5
.



CINCINNATI OH 45999-0049

In reply refer to: 0260767987
Sep. 28, 2018 LTR 105C 3
[REDACTED] 7199 200412 01 2
00001037
BODC: LM

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222



003853

Taxpayer identification number: [REDACTED] 7199
Kind of tax: Business Income
Date of claims received: Aug. 23, 2018
Tax periods: Dec. 31, 2004 Sep. 30, 2004
June 30, 2004 Mar. 31, 2004

Dear Taxpayer:

WE COULDN'T ALLOW YOUR CLAIM

We disallowed your claims for credit for the periods listed at the top of this letter.

WHY WE CAN'T ALLOW YOUR CLAIM

There were no expected changes in current regulation, pending legislation or current litigation relevant to the United States District Court's Judgment dated December 17, 2008 in which it was ordered that criminal monetary penalties restitution of \$1,633,471.00 be made to the IRS. The Judgment of the Court is clear and there is no Statute or Regulation upon which to base your claim.

WHAT TO DO IF YOU DISAGREE

You have the right to appeal our decision to disallow your claim. You can represent yourself before Appeals or you can have an attorney, certified public accountant, enrolled agent, or any other person authorized to practice before the IRS represent you. To have someone represent you, attach Form 2848, Power of Attorney and Declaration of Representative, (or similar written power of attorney) to your written statement. If we don't hear from you within 30 days from the date of this letter, we will process your case with the information we have now.

For claims \$25,000 or less, you can request a small dollar case appeal. You must prepare a formal protest for a disallowed claim over \$25,000.

To request a small dollar case appeal:

0260767987
Sep. 28, 2018 LTR 105C 3
7199 200412 01 2
00001038

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

1. Prepare a written statement that you want to appeal to the Office of Appeals.
2. List the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
4. Mail your appeal request to the address at the top of the first page of this letter.

To prepare a formal protest:

1. Prepare a written statement that you want to appeal to the Office of Appeals.
2. List the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
4. Include a detailed statement of facts with names, amounts, locations, etc., to support your reasons for disputing the disallowance.
5. If you know the particular law or authority that supports your position, identify that law or authority by providing a legal citation.
6. Sign the perjury statement below and include it with your written appeal. If your authorized representative prepares the request for an appeal, he or she must sign the statement.
7. Mail your written formal protest to the address at the top of the first page of this letter.

STATEMENT BY INDIVIDUALS OR SOLE PROPRIETORS

"Under penalties of perjury, I declare that the facts present on my written appeal are, to the best of my knowledge and belief, true, correct, and complete."

_____	_____
Signature	Date
_____	_____
Spouse's Signature, if a Joint Return	Date

STATEMENT BY INDIVIDUAL AUTHORIZED TO PRACTICE BEFORE THE IRS

"Under penalty of perjury, I declare that I prepared the written statement and accompanying documents. To the best of my knowledge the protest and accompanying documents are true and correct."

0260767987
Sep. 28, 2018 LTR 105C 3
7199 200412 01 2
00001039

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222



003853

Signature of Representative Enrollment Number Date

If you need forms, schedules or publications to respond to this letter, you can download them at www.irs.gov/formspubs or call 1-800-TAX-FORM (1-800-829-3676).

HOW TO CONTACT US

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Telephone number () _____ Hours _____

Keep a copy of this letter for your records.

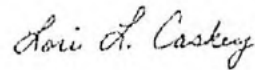
Thank you for your cooperation.

You can get any of the forms or publications mentioned in this letter on our website at www.irs.gov/formspubs or by calling 800-TAX-FORM (800-829-3676).

0260767987
Sep. 28, 2018 LTR 105C 3
[REDACTED] 7199 200412 01 2
00001040

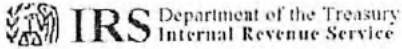
DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

Sincerely yours,



Lori L. Caskey, Director
Campus Examination, Cincinnati

Enclosures:
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Publication 1
Envelope
Publication 5



CINCINNATI OH 45999-0049



DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

003853

CUT OUT AND RETURN THE VOUCHER AT THE BOTTOM OF THIS PAGE IF YOU ARE MAKING A PAYMENT,
EVEN IF YOU ALSO HAVE AN INQUIRY.



The IRS address must appear in the window.

Use for payments

BODCD-LM

0260767987

Letter Number: LTR0105C
Letter Date : 2018-09-28
Tax Period : 200412

INTERNAL REVENUE SERVICE

CINCINNATI OH 45999-0049

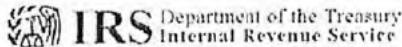


* [REDACTED] 7199 *

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

[REDACTED] 7199 FT DOUG 01 2 200412 670 000000000000

App#0283



CINCINNATI OH 45999-0049

In reply refer to: 0260767987
Sep. 28, 2018 LTR 105C 3
[REDACTED] 7199 200509 01 2
00001049
BODC: LM

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222



003851

Taxpayer identification number: [REDACTED] 7199
Kind of tax: Business Income
Date of claims received: Aug. 23, 2018
Tax periods: Sep. 30, 2005 June 30, 2005
Mar. 31, 2005

Dear Taxpayer:

WE COULDN'T ALLOW YOUR CLAIM

We disallowed your claims for credit for the periods listed at the top of this letter.

WHY WE CAN'T ALLOW YOUR CLAIM

There were no expected changes in current regulation, pending legislation or current litigation relevant to the United States District Court's Judgment dated December 17, 2008 in which it was ordered that criminal monetary penalties restitution of \$1,633,471.00 be made to the IRS. The Judgment of the Court is clear and there is no Statute or Regulation upon which to base your claim.

WHAT TO DO IF YOU DISAGREE

You have the right to appeal our decision to disallow your claim. You can represent yourself before Appeals or you can have an attorney, certified public accountant, enrolled agent, or any other person authorized to practice before the IRS represent you. To have someone represent you, attach Form 2848, Power of Attorney and Declaration of Representative, (or similar written power of attorney) to your written statement. If we don't hear from you within 30 days from the date of this letter, we will process your case with the information we have now.

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To request a small dollar case appeal:

0260767987

Sep. 28, 2018 LTR 105C 3

7199 200509 01 2

00001050

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

1. Prepare a written statement that you want to appeal to the Office of Appeals.
2. List the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
4. Mail your appeal request to the address at the top of the first page of this letter.

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2. List the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
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4. Include a detailed statement of facts with names, amounts, locations, etc., to support your reasons for disputing the disallowance.
5. If you know the particular law or authority that supports your position, identify that law or authority by providing a legal citation.
6. Sign the perjury statement below and include it with your written appeal. If your authorized representative prepares the request for an appeal, he or she must sign the statement.
7. Mail your written formal protest to the address at the top of the first page of this letter.

STATEMENT BY INDIVIDUALS OR SOLE PROPRIETORS

"Under penalties of perjury, I declare that the facts present on my written appeal are, to the best of my knowledge and belief, true, correct, and complete."

_____	_____
Signature	Date
_____	_____
Spouse's Signature, if a Joint Return	Date

STATEMENT BY INDIVIDUAL AUTHORIZED TO PRACTICE BEFORE THE IRS

"Under penalty of perjury, I declare that I prepared the written statement and accompanying documents. To the best of my knowledge the protest and accompanying documents are true and correct."

Sep. 28, 2018 LTR 105C 3
7199 200509 01 2
0260767987
00001051

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222



003851

Signature of Representative	Enrollment Number	Date
-----------------------------	-------------------	------

If you need forms, schedules or publications to respond to this letter, you can download them at www.irs.gov/formspubs or call 1-800-TAX-FORM (1-800-829-3676).

HOW TO CONTACT US

If you have questions, you can call us toll free at 1-800-829-0115.

If you prefer, you can write to us at the address at the top of the first page of this letter.

When you write, include a copy of this letter, and provide your telephone number and the hours we can reach you in the spaces below.

Telephone number () _____ Hours _____

Keep a copy of this letter for your records.

Thank you for your cooperation.

You can get any of the forms or publications mentioned in this letter on our website at www.irs.gov/formspubs or by calling 800-TAX-FORM (800-829-3676).

0260767987

Sep. 28, 2018 LTR 105C 3

7199 200509 01 2

00001052

DOUGHERTY ELECTRIC INC
% IAN M COMISKY
FOX ROTHCHILD LLP
2000 MARKET ST FL 20
PHILADELPHIA PA 19103-3222

Sincerely yours,

Lori L. Caskey

Lori L. Caskey, Director
Campus Examination, Cincinnati

Enclosures:
Copy of this letter
Publication 1
Envelope
Publication 5

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUGHERTY ELECTRIC INC.,)	
)	
Plaintiff,	)	Civil Action No. 20-1254 T
vs.	)	Sr. Judge Loren A. Smith
)	
UNITED STATES OF AMERICA,)	
)	
Defendant)	

PLAINTIFF’S AMENDED MOTION FOR LEAVE TO FILE SUR-REPLY BRIEF IN FURTHER OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

Plaintiff Dougherty Electric Inc. respectfully submits this amended motion seeking leave to file a sur-reply brief of no more than six pages in further opposition to Defendant’s motion to dismiss.¹ On June 21, 2021, Defendant filed a motion to dismiss Plaintiff’s Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims. Dkt. No. 16. On September 22, 2021, Plaintiff filed its brief in opposition to the motion to dismiss. Dkt. No. 23. On October 8, 2021, Defendant filed a reply to Plaintiff’s brief in opposition to the motion to dismiss. Dkt. No. 24. Oral argument is scheduled for December 15, 2021.

Plaintiff respectfully seeks leave to file the attached six-page sur-reply brief. The decision to grant leave to file a sur-reply brief is committed to the sound discretion of the Court. In deciding whether to permit the filing of a sur-reply brief, the Court should consider whether a sur-reply would be helpful to the adjudication of the motion and whether the defendant would be unduly prejudiced if the Court grants leave. *See Ute Indian Tribe of Uintah & Ouray Indian Rsrv. v. United States*, 145 Fed. Cl. 609, 617 n.6 (2019) (citing *Plunkett v. Dep’t of Justice*, 249

¹ On October 22, 2021, Plaintiff filed a motion for leave to file a sur-reply brief. Dkt. No. 26. The government filed no opposition, and the Court has not yet ruled on that motion. Plaintiff respectfully requests that the Court substitute this amended motion for the pending motion filed at Dkt. No. 26.

F. Supp. 3d 73, 74 n.2 (D.D.C. 2017)). Plaintiff seeks leave to file a sur-reply brief to address three discrete issues raised by Defendant in its 18-page reply brief.

First, Defendant's reply brief cites new authority for the proposition that a valid informal refund claim must necessarily set forth the tax years in question. Dkt. No. 24, at 4-5 (citing *Stephens v. United States*, 884 F.3d 1151 (2018), and *Johnson v. United States*, 127 Fed.Cl. 529 (2016)). Plaintiff seeks the opportunity to address these new cases and to demonstrate how they are distinguishable from the facts of the instant case. Plaintiff also seeks the opportunity to address a contrary line of authority cited with approval by the Federal Circuit.

Second, Plaintiff seeks the opportunity to respond to Defendant's arguments regarding *Parker Hannifin Corp. United States*, 71 Fed. Cl. 231 (2006), a case cited by Plaintiff in its opposition to the motion to dismiss. Dkt. No. 24, at 8-9. Plaintiff believes that Defendant has misconstrued the holding of this case and overlooked important factual details regarding the refund claim at issue in that case.

Third, Defendant in its reply brief takes the position that Plaintiff "concedes the government's motion for failure to state a claim on which relief can be granted." Dkt. No. 24, at 18. Plaintiff wishes to clarify that it has not made any such concession and addresses this issue in its proposed sur-reply brief.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that the Court grant it leave to file an amended sur-reply brief in further opposition to Defendant's motion to dismiss.

Respectfully submitted,

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Dated: December 14, 2021

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUGHERTY ELECTRIC INC.,)	
)	
Plaintiff,	)	Civil Action No. 20-1254 T
vs.	)	Sr. Judge Loren A. Smith
)	
UNITED STATES OF AMERICA,)	
)	
Defendant)	
)	

PLAINTIFF’S AMENDED SUR-REPLY BRIEF IN FURTHER OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

Plaintiff Dougherty Electric Inc. respectfully submits this amended sur-reply brief in further opposition to Defendant’s motion to dismiss (Dkt. No. 16).

A. Defendant Incorrectly Contends That Plaintiff’s Protective Refund Claims Are Invalid

In its reply, Defendant claims that the Protective Refund Claims, filed December 7, 2017, are not valid claims for refund under the informal claim doctrine because the Protective Refund Claims do not explicitly provide the tax year (or years) for which Plaintiff sought a refund. Dkt. No. 24, at 4-6. In support of this argument, Defendant cites two new cases. *Id.* Defendant initially raised this argument in its motion to dismiss but did not expound upon it at that time. Dkt. No. 16, at 9-10. As described below, Defendant’s reliance on both cases is misplaced.

Defendant first cites *Johnson v. United States*, 127 Fed. Cl. 529 (2016), where the plaintiff claimed he was a federal “nontaxpayer,” had no obligation to comply with an IRS levy notice, and sought \$61,381.19 in damages for “illegally levied” monies from his pension fund. *Id.* at 532. Among his many allegations, the plaintiff sought punitive damages and alleged that the IRS’s levy actions constituted violations of the Racketeer Influenced and Corrupt Organizations Act. *Id.* In dismissing the case for lack of subject-matter jurisdiction, this Court

first found that the plaintiff, a self-proclaimed non-taxpayer, failed to show that he had, in fact, paid taxes which could be refunded in the case at hand and, therefore, failed to comply with the full payment rule. *Id.* at 535. In addition, this Court explained that the taxpayer was required, but ultimately failed, to file an “adequate” refund claim with the IRS. *Id.* at 536.¹

Defendant next cites *Stephens v. United States*, 884 F.3d 1151 (Fed. Cir. 2018), where the refund claim was based on an amended individual income tax return for tax year 1997 which sought to carry over passive-activity losses arising in 1995 and 1996 attributable to the plaintiff-husband’s shareholder interest in a S corporation. *Id.* at 1154. The Federal Circuit found that the amended 1997 return did not constitute an informal refund claim for 1995 or 1995 since it did not sufficiently apprise the IRS that the taxpayers were seeking a refund for the prior years. *Id.* at 1156. Importantly, the taxpayers in that case had never challenged the IRS’s prior year adjustments.

Importantly, Defendant fails to note a significant line of contrary authority cited with approval in *Computervision v. United States*, 445 F.3d 1355, 1364, n.9 (Fed. Cir. 2006), holding that an informal claim does not need to list the years involved. *See, e.g., Kaffenberger v. United States*, 314 F.3d 944, 955 (8th Cir. 2004) (“Failure to specify the year does not necessarily defeat the informal claim if other facts suffice to put the IRS on notice of the specified refund sought.”); *PALA v. United States*, 234 F.3d 873, 878 (5th Cir. 2000) (stating that the fact that the informal claim did not specify the year “is irrelevant”); *United States v. Commercial Bank of Peoria*, 874

¹ Defendant’s reply brief notes that the Court deemed the failure by Mr. Johnson to include the tax year as *one* reason (among many) why his administrative claim was inadequate. Among other reasons why the claim was inadequate, the *Johnson* Court explained that the notice upon which Mr. Johnson was seeking a refund was not even addressed to him, but rather in his capacity as trustee. *Id.* at 535-36. The Court further concluded that it was unclear why Mr. Johnson, in his individual capacity, was entitled to moneys belonging to the trust. *Id.*

F.2d 1165, 1171 (7th Cir. 1989) (letter failed to include the word refund or the year and stating “[a] taxpayer may rely on other documents, conversations or correspondence to fulfill his notice obligations.”). Here, the tax years were not specified in the informal claim because the taxpayer’s accountants could not reconcile the IRS fund applications for the 17 quarters involved. The payments were determined to be a restitution-based assessment because the payment check was tendered to the Justice Department, not to the IRS, and the manner in which the Justice Department applied the funds did not match the available IRS records.²

Plaintiff does not dispute that a formal claim for refund must comply with requirements as set forth in Treas. Reg. § 301.6402-2(b)(1). However, the informal claim doctrine must be liberally construed because, by definition, it necessarily involves an *informal* claim which is later perfected by a formal claim. What the case law actually requires is that a taxpayer’s informal refund claim must have a written component that “adequately apprise the Internal Revenue Service that a refund is sought and for certain years,” *but* “the writing should not be given a crabbed or literal reading, ignoring *all the surrounding circumstances* which give it body and content.” *Am. Radiator & Standard Sanitary Corp. v. United States*, 318 F.2d 915, 920-21 (Ct. Cl. 1963) (holding that informal claim not defective when it failed to list years). The focus is on the claim, *as a whole*, and not merely the written component. *Id.* (emphasis added).

² Attached hereto as Exhibit 1 is the Justice Department’s restitution summary. The “01” entries reflect payments on withholding tax obligations. Even a cursory review reflects that the taxpayer paid much more than the restitution amount into the Justice Department’s restitution fund. More importantly, the application of funds as shown in the restitution summary differs from the IRS account transcripts for *all relevant time periods*. Compare Restitution Summary at 4 (December 11, 2015, 2003/12 \$108,863) with IRS Account Transcript (Misc. Payment 2003/12 \$308,632) with Complaint ¶ 14, 2003/12 \$101,406; Restitution Summary at 5 (December 11, 2015, no allocation to 2005/09) with IRS Account Transcript (Misc. Payment 2005/09, \$123,056.48) with Complaint ¶ 14 (2005/09, \$69,457). While the IRS knew how the payments were applied as between tax, interest, and penalties, the taxpayer did not. It is worth noting that the IRS’s restitution/assessment procedures have been, and continue to be, subject to criticism. See Treasury Inspector General for Tax Administration Report Number: 2021-30-033, “Criminal Restitution Assessment Procedures Need Improvement” (Jun. 7, 2021) (further citing 2012 Report Number: 2012-30-012, “Procedures are Needed to Improve the Accounting and Monitoring of Restitution Payments” (Jan. 2012)).

In its reply, Defendant avers that without a copy of the restitution order, the IRS “could not . . . ascertain any other information that could allow the IRS to know which tax year was at issue.” Dkt. No. 24, at 6. This allegation should be summarily rejected. There were two payments made in December 2015 – one for corporate employment taxes and one for individual income taxes. Each was labelled as such on the Justice Department’s restitution summary. Moreover, as Defendant acknowledges, when the IRS accepted the December 11, 2015, payment, the IRS allocated the \$1.5 million payment to quarterly employment tax periods and in specific amounts. Dkt. No. 16, at 5 (*citing* Compl. ¶ 23; Compl. Exh. C at ECF p. 21 of 91).

Unlike *Johnson*, there is no dispute that Plaintiff complied with the full payment rule and sought a refund on its own behalf for money it had paid. Unlike in *Stephens*, Plaintiff did not file an administrative claim on an amended return (a formal claim) and later claim that it was seeking a refund for another year. Instead, Plaintiff clearly apprised the IRS of the basis of its claim in the timely Protective Refund Claims, and later perfected the claims, as required, with Forms 843 for each tax period at issue.

In its reply, Defendant also claims that Plaintiff’s reliance on the June 19, 2018, correspondence from the IRS in response to the informal claims is misplaced. Dkt. No. 24, at 15-17. The June 19, 2018, correspondence belies Defendant’s claim that Plaintiff’s Protective Refund Claims failed to adequately apprise the IRS of Plaintiff’s basis for refund. *See* Compl., Exh. A. The same is true of the Modified Protective Claims. *See* Compl., Exh. B. The IRS correspondence shows the tax periods for which Plaintiff seeks a refund.

B. Defendant Misconstrues the Holding of *Parker Hannifin Corp. v. United States*

Defendant’s reply provides an extremely brief summary of this Court’s opinion in *Parker Hannifin Corp. v. United States*, 71 Fed. Cl. 231 (2006). In that case, plaintiff filed a letter with

the IRS on May 2000 (the “first letter,” within the period of limitations) asserting a ground for refund, filed a second letter on February 23, 2001, asserting a similar ground for refund (the “second letter,” filed outside the period, tracked “more directly” the allegations in the complaint), and then filed its complaint for refund. *Id.* at 232-33. Defendant seemingly takes the position that the Court’s only holding in *Parker Hannifin* is that the second letter was germane to the first letter. Dkt. No. 24, at 9.

In *Parker Hannifin*, the United States moved to dismiss the complaint for lack of subject-matter jurisdiction. *See* 71 Fed. Cl. at 233. Thus, the Court did more than just hold that the second letter was germane to the first letter. *Id.* at 233-34. It concluded that it would *not* grant the defendant’s motion to dismiss for lack of jurisdiction in a case where a timely claim (that unquestionably was not a formal claim) was properly supplemented by an out-of-time claim (that unquestionably also was not a formal claim). *Id.* at 236 (“Defendant’s motion to dismiss the complaint for lack of jurisdiction is DENIED.”). The instant case presents analogous facts.

Defendant correctly states that the *Parker Hannifin* opinion does not discuss whether the plaintiff in that case ever filed a formal claim. Yet, Defendant reaches the incorrect conclusion that Plaintiff’s Complaint cannot fall within the germaneness exception because the *Parker Hannifin* opinion fails to mention whether a formal claim was subsequently filed. Despite the apparent absence of a formal claim, Defendant, respectfully, misses the point: this Court is not bound by strict adherence to the rules of the germaneness doctrine as stated in *Computervision Corp v. United States*, 445 F.3d 1355, 1370-1373 (Fed. Cir. 2006).

C. Defendant Incorrectly Construes Plaintiff’s Position As a “Concession”

In its reply, Defendant avers that the Complaint can be read to include a cause of action based on alleged violations of I.R.C. § 6201(a)(4) and construes Plaintiff’s opposition to address

solely whether the Complaint adequately pleaded a claim under I.R.C. § 6751(b)(1). Dkt. No. 24, at 17. In a footnote in its reply brief, Defendant suggests that the Court need only consider the claims under I.R.C. § 6751(b)(1) if it determines that the Protective Refund Claims of December 7, 2017, were valid and timely informal claims for refund, and if the Court holds to the contrary, it would lack subject-matter jurisdiction over the entire Complaint. Dkt. No. 24, at 17, n.14. Defendant concludes that Plaintiff's lack of opposition is a concession and that the Court should grant Defendant's motion to dismiss for failure to state a claim upon which relief may be granted "independently" from dismissal of Plaintiff's refund claim based on supervisory approval. Dkt. No. 24, at 18.

To clarify, Plaintiff agrees with Defendant's conclusion that I.R.C. § 6201(a)(4) should not have been applied. However, the IRS seems to have treated the restitution as a tax and stated so in correspondence to the taxpayer (utilizing Letter 3010C), applying I.R.C. § 6201(a)(4)). Therefore, the Court should deny the motion to dismiss the Complaint including a claim that the IRS improperly employed I.R.C. § 6201(a)(4), and permit Plaintiff to conduct discovery as to the IRS's conduct.

CONCLUSION

Defendant devoted 28 pages in its motion and 23 pages in its reply in an attempt to convince the Court that it lacks jurisdiction. The length of these submissions belies Defendant's contentions that Plaintiff did not properly file an informal claim with sufficient information within the Court's jurisdiction. For the foregoing reasons, as well as for the reasons set forth in its opposition brief, Plaintiff respectfully requests that the Court deny Defendant's motion to dismiss in its entirety.

Respectfully submitted,

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Dated: December 14, 2021

EXHIBIT 1

DOJ Summary by Name Individual:

Name	DOUGHERTY, DONALD	TIN	9824
Description	Criminal Restitution	Contact	Michelle Blank
District	USDC EASTERN PA	Phone	(215)861-1278
Rest. Ordered	\$1,633,471.00	Comments:	CLOSED FULL PAID & APPLIED
RDN	2:07-CR-00361	JS? <input type="checkbox"/>	Case Type Regular
		Blue <input type="checkbox"/>	MFT 31 Est <input type="checkbox"/> Non Fed <input type="checkbox"/>

Summary by Name Receipt Checks

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DOJ Summary by Name Individual:

Name	DOUGHERTY, DONALD	TIN	9824
Description	Criminal Restitution	Contact	Michelle Blank
District	USDC EASTERN PA	Phone	(215)861-1278
Rest. Ordered	\$1,633,471.00	Comments:	CLOSED FULL PAID & APPLIED
RDN	2:07-CR-00361	JS? <input type="checkbox"/>	Case Type Regular
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Summary by Name Receipt Checks

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									01	200512	TP ACCT	\$5,604.00	
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DOJ Summary by Name Individual:

Name	DOUGHERTY, DONALD	TIN	9824
Description	Criminal Restitution	Contact	Michelle Blank
District	USDC EASTERN PA	Phone	(215)861-1278
Rest. Ordered	\$1,633,471.00	Comments:	CLOSED FULL PAID & APPLIED
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Summary by Name Receipt Checks

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2:07-CR-00361	7199	10/11/2013	\$25,000.00	10/2/2013	Check	21344	08	YES	01	200109	TP ACCT	\$25,000.00	
2:07-CR-00361	7199	11/7/2013	\$25,000.00	11/4/2013	Check	21440	08	YES	01	200109	TP ACCT	\$25,000.00	
2:07-CR-00361	7199	12/9/2013	\$10,788.63	12/1/2013	Check	21528	08	YES	01	200109	TP ACCT	\$10,788.63	Ck 25000 only part restitution
2:07-CR-00361	7199	4/5/2014	\$3,926.71	4/1/2014	Check	22021	08	YES	01	200112	TP ACCT	\$3,926.71	Part of check offset (TC 706)
2:07-CR-00361	7199	5/9/2014	\$14,280.95	5/5/2014	Check	22140	08	YES	01	200112	TP ACCT	\$14,280.95	Ck 25,000 but only part to restitutio
2:07-CR-00361	7199	7/7/2014	\$23,020.91	7/2/2014	Check	22380	08	YES	01	200209	TP ACCT	\$23,020.91	Part of check offset (TC 706)
2:07-CR-00361	7199	8/11/2014	\$1,088.23	8/1/2014	Check	22490	08	YES	01	200209	TP ACCT	\$1,088.23	Ck 25,000 but only part to restitutio
2:07-CR-00361	7199	9/8/2014	\$16,773.75	9/3/2014	Check	22645	08	YES	01	200212	TP ACCT	\$16,773.75	Part of check offset (TC 706)
2:07-CR-00361	7199	10/10/2014	\$25,000.00	10/1/2014	Check	22748	08	YES	01	200212	TP ACCT	\$25,000.00	
2:07-CR-00361	7199	11/7/2014	\$13,763.69	11/1/2014	Check	22884	08	YES	01	200212	TP ACCT	\$13,763.69	Ck 25,000 but only part to restitutio
2:07-CR-00361	9824	12/5/2014	\$5,830.44	12/1/2014	Check	22603	08	YES	31	200212	TP ACCT	\$5,830.44	Part of check offset (TC 706)

DOJ Summary by Name Individual:

Name	DOUGHERTY, DONALD	TIN	9824
Description	Criminal Restitution	Contact	Michelle Blank
District	USDC EASTERN PA	Phone	(215)861-1278
Rest. Ordered	\$1,633,471.00	Comments:	CLOSED FULL PAID & APPLIED
RDN	2:07-CR-00361	JS? <input type="checkbox"/>	Case Type Regular
		Blue <input type="checkbox"/>	MFT 31 Est <input type="checkbox"/> Non Fed <input type="checkbox"/>

Summary by Name Receipt Checks

RDN	TIN	RevDate	Check Amt	Ck Date	Type	Check No	DPC	Appl	MFT	TxPd	Acct	Amount	Comments
2:07-CR-00361	9824	1/2/2015	\$24,350.00	1/1/2015	Check	23077	08	YES	31	200212	TP ACCT	\$24,350.00	Ck 24,470 but only part to restitutio
2:07-CR-00361	9824	1/24/2015	\$24,470.00	1/19/2015	Check	23196	08	YES	31	200212	TP ACCT	\$24,470.00	Check offset (TC 706)
2:07-CR-00361	9824	3/6/2015	\$24,470.00	3/1/2015	Check	23339	08	YES	31	200212	TP ACCT	\$24,470.00	
2:07-CR-00361	9824	4/6/2015	\$24,470.00	4/1/2015	Check	23374	08	YES	31	200212	TP ACCT	\$24,470.00	
2:07-CR-00361	9824	4/15/2015	\$68,028.54	4/13/2015	Check	23377	08	YES	31	200212	TP ACCT	\$68,028.54	Ck offset 149500 but only part restit
2:07-CR-00361	9824	5/12/2015	\$24,470.00	5/1/2015	Check	50162	08	YES	31	200212	TP ACCT	\$24,470.00	
2:07-CR-00361	9824	6/8/2015	\$24,470.00	6/1/2015	Check	50248	08	YES	31	200212	TP ACCT	\$24,470.00	
2:07-CR-00361	9824	7/10/2015	\$24,470.00	7/7/2015	Check	50391	08	YES	31	200212	TP ACCT	\$24,470.00	Check offset (TC 706)
2:07-CR-00361	7199	7/10/2015	\$2,176.53	7/7/2015	Check	50392	08	YES	01	200306	TP ACCT	\$2,176.53	Part of check offset (TC 706)
2:07-CR-00361	9824	8/11/2015	\$24,470.00	8/11/2015	None	EFTPS 1	08	YES	31	200212	TP ACCT	\$24,470.00	EFTPS offset (TC 706)
2:07-CR-00361	7199	8/14/2015	\$16,716.47	8/10/2015	Check	50633	08	YES	01	200306	TP ACCT	\$16,716.47	Ck 25,000 but only part to restitutio
2:07-CR-00361	7199	9/8/2015	\$17,345.00	9/8/2015	Check	50537	08	YES	01	200309	TP ACCT	\$17,345.00	Ck 25,000 but only part to restitutio
2:07-CR-00361	9824	9/8/2015	\$24,470.00	9/8/2015	None	EFTPS 2	08	YES	31	200212	TP ACCT	\$24,470.00	EFTPS offset (TC 706)
2:07-CR-00361	7199	10/9/2015	\$25,000.00	10/5/2015	Check	50715	08	YES	01	200309	TP ACCT	\$25,000.00	
2:07-CR-00361	7199	12/11/2015	\$503,006.00	12/11/2015	Check	1000177127	08	YES	01	200309	TP ACCT	\$15,947.00	
									01	200312	TP ACCT	\$108,863.00	Ck 1,534,504.37 only part to restitut
									01	200403	TP ACCT	\$44,895.00	
									01	200406	TP ACCT	\$78,159.00	
									01	200409	TP ACCT	\$77,977.00	
									01	200412	TP ACCT	\$80,025.00	
									01	200503	TP ACCT	\$48,745.00	
									01	200506	TP ACCT	\$48,395.00	

DOJ Summary by Name Individual:

Name	DOUGHERTY, DONALD	TIN	9824
Description	Criminal Restitution	Contact	Michelle Blank
District	USDC EASTERN PA	Phone	(215)861-1278
Rest. Ordered	\$1,633,471.00	Comments:	CLOSED FULL PAID & APPLIED
RDN	2:07-CR-00361	JS? <input type="checkbox"/>	Case Type Regular
Summary by Name Receipt Checks		Blue <input type="checkbox"/>	MFT 31 Est <input type="checkbox"/> Non Fed <input type="checkbox"/>

RDN	TIN	RevdDate	Check Amt	Ck Date	Type	Check No	DPC	Appl	MFT	TxPd	Acct	Amount	Comments
2:07-CR-00361	9824	12/11/2015	\$356,929.00	12/11/2015	Check	1000177128	08	YES	31	200312	TP ACCT	\$248,699.00	Ck 1,058,583.82 only part to restitut
									31	200412	TP ACCT	\$108,230.00	

Summary for 'NameLn1' = DOUGHERTY, DONALD (81 detail records)

Sum **\$1,633,471.00**

Grand Total **\$1,633,471.00**

Outstanding Balance Owed **\$0.00**

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUGHERTY ELECTRIC INC.,)	
)	
Plaintiff,	)	Civil Action No. 20-1254 T
vs.	)	(Sr. Judge Loren A. Smith)
)	
THE UNITED STATES,)	
)	
Defendant)	

**PLAINTIFF’S REPLY MEMORANDUM IN FURTHER SUPPORT OF ITS
AMENDED MOTION FOR LEAVE TO FILE SUR-REPLY BRIEF IN FURTHER
OPPOSITION TO DEFENDANT’S MOTION TO DISMISS**

Plaintiff Dougherty Electric Inc. respectfully files this reply memorandum in further support of its Amended Motion for Leave to File Sur-Reply Brief in Further Opposition to Defendant’s Motion to Dismiss (Dkt. No. 27). In its response brief (Dkt. No. 29, at 2), Defendant acknowledges that Plaintiff has the burden of establishing jurisdiction, but then complains when Plaintiff attempts to meet that burden by offering a Justice Department restitution summary and highlighting cases which clearly establish that this Court has jurisdiction. Plaintiff’s amended motion should be granted, and Defendant’s motion to dismiss should be denied.

By way of background, Plaintiff originally filed a motion for leave to file a sur-reply brief in further opposition to Defendant’s motion to dismiss on October 22, 2021 (Dkt. No. 26). The government asserted no objection to that motion. *See* Response Brief of the United States in Opposition to Plaintiff’s Amended Motion for Leave to File Sur-Reply Brief (Dkt. No. 29) (“Defendant’s Response Brief”), at 1 n.1 (“Defendant did not object to the Court granting that motion.”). The Court did not immediately rule upon that motion, and it remained pending as the original date for oral argument on Defendant’s motion to dismiss – November 19, 2021 – approached.

After that original oral argument date was cancelled, Plaintiff determined that it was necessary to amend its motion for leave to file a sur-reply brief, and proceeded to prepare an amended pleading. On December 6, 2021, the Court rescheduled oral argument for December 15, 2021, and Plaintiff filed its amended motion for leave to file a sur-reply brief on December 14, 2021 (Dkt. No. 27). At oral argument held on December 15, Defendant’s counsel asserted no objection to Plaintiff’s filing of an amended motion for leave to file a sur-brief. Only on December 21, six days *after* oral argument, did Defendant finally come forward with an objection to Plaintiff’s amended motion, claiming that it was “filed late” and contained “new substantive arguments” and “new evidence.” Defendant’s Response Brief, at 1-2. Under these circumstances, Defendant has waived its right to object to the filing of a sur-reply brief.

Even if no waiver has occurred, Defendant’s arguments against Plaintiff’s filing of an amended sur-reply brief are readily addressed. First, Plaintiff’s amended sur-reply brief was not “filed late.” Plaintiff’s amended sur-reply brief has not yet even been accepted for filing – only if the Court grants Plaintiff’s motion for leave will the proposed sur-reply brief actually be filed on the docket. In any event, Plaintiff’s motion for leave to file a sur-reply brief was timely filed on October 22, 2021 (Dkt. No. 26) (and, as noted, Defendant had no objection to the filing of a sur-reply brief). Before the Court ruled on that motion, Plaintiff filed an *amended* motion for leave to file a sur-reply brief. Accordingly, Plaintiff’s December 14 amended filing was not “late.”

Second, Plaintiff’s amended sur-reply brief does not contain “new substantive arguments.” Defendant asserts that the amended sur-reply brief “contains a new argument that plaintiff was unable to determine the tax years at issue.” Defendant’s Response Brief, at 3. This is hardly a new argument, as Plaintiff has been advancing this contention since the filing of

Defendant's Motion to Dismiss, and it explains why Plaintiff filed informal Protective Refund Claims followed by Forms 843 for each of the quarters at issue. *See* Dkt. No. 23, at 22-32.

Defendant then repeats its argument that Plaintiff should have been aware of the tax periods at issue when its refund claims were filed in December 2017. In support of this argument, Defendant claims that Plaintiff's tax payment "was accompanied by a schedule that specified the tax quarter and amount for which the payment should be applied." Defendant's Response Brief, at 3. This predicate is the basis for Defendant's argument that the December 2017 Protective Refund Claims were insufficient because the same schedule was not attached.

As a factual matter, however, no such schedule accompanied Plaintiff's payment of \$1,534,504.37 on December 11, 2015.¹ Preliminarily, Defendant cites to an exhibit to Plaintiff's Complaint (Ex. C (Dkt. No. 1-2, at 21)) for the proposition that the check contained an attached schedule allocating the payments by quarter. This is simply not the case. The Complaint attached the Forms 843 submitted on August 16, 2018, which in turn attached the 2015 check, the Protective Refund Claims and the Forms 843 which contained an accountant's schedule.

The one-page schedule referenced by Defendant in its Response Brief was not created until years after Plaintiff's Protective Refund Claims were filed, when an accountant employed by CBIZ MHM LLC prepared it as part of the process of preparing the Forms 843 that were filed in August 2018. *See* Declaration of James Mahoney (attached hereto as Exhibit A). Mr. Mahoney's firm was not retained until November 2017, and therefore could not have created the referenced accountant's schedule for the Plaintiff before the retention date. *Id.* ¶¶ 6-9.

Defendant's contention that "Plaintiff's attempt to argue that it could not know what quarters

¹ If such a schedule were attached to the check, Defendant would clearly have known of the quarters at issue when the Protective Refund Claims were filed.

were at issue is beyond the pale” (Defendant’s Response Brief, at 4) should therefore be summarily rejected.²

Defendant next takes issue with certain of the cases cited in Plaintiff’s amended sur-reply (Defendant’s Response Brief, at 4). Plaintiff pointed out that these cases were cited with approval by the Court in *Computervision v. United States*, 445 F.3d 1355, 1364 n.9 (Fed. Cir. 2006). Both parties referred to *Computervision* repeatedly in the briefing on Defendant’s motion to dismiss. See Motion of the United States to Dismiss the Complaint (Dkt. No. 16) (citing *Computervision* on pages 9, 10, 11, 12, 13, and 14); Plaintiff’s Brief in Opposition to Defendant’s Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim Upon Which Relief May Be Granted (Dkt. No. 23) (citing *Computervision* on pages 5, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 24, 25, 26); Reply Brief in Support of the United States’ Motion to Dismiss the Complaint (Dkt. No. 24) (citing *Computervision* at pages 4, 7, 8, 9, 10, 11, 13, 14, 15, 16). Defendant’s suggestion that these cases are “new” (Defendant’s Response Brief at 4) is therefore disingenuous.

More importantly, Defendant’s conclusion that “plaintiff cites no case in which *after the limitations period has run*, plaintiff was permitted to provide the IRS with *the minimum* requirements for a refund claim” (Defendant’s Response Brief at 5) is simply wrong. Each of the cited cases – *Kaffenberger v. United States*, 314 F.3d 944 (8th Cir. 2003); *PALA Inc. Employees Profit Sharing Plan and Trust Agreement v. United States*, 234 F.3d 873 (5th Cir. 2000); and *United States v. Commercial Bank of Peoria*, 874 F.2d 1165 (7th Cir. 1989) –

² The Court should also reject Defendant’s argument that Plaintiff somehow engaged in “brinksmanship with the period of limitations.” Defendant’s Response Brief, at 4. It is undisputed that Plaintiff’s December 2017 refund claim was timely filed before expiration of the statute of limitations. Defendant’s implication that Plaintiff deliberately waited to file its refund claim until the last possible moment is not only factually inaccurate but also makes no sense. Finally, Plaintiff’s filing of the attached Mahoney Declaration puts to rest Defendant’s contention about “unsworn attorney argument.” Defendant’s Response Brief, at 4 n.2.

involved the informal claim doctrine where the claim was not perfected until after the limitations period had expired.³

Defendant also complains that Plaintiff's proposed amended sur-reply brief "attached new evidence that defendant had never seen beforehand." Defendant's Response Brief, at 1, n.1. The purportedly "new evidence" in question consists of a Justice Department restitution summary for Donald Dougherty. This document is publicly-available and was obtained by Plaintiff's counsel from the United States District Court for the Eastern District of Pennsylvania. Both the Justice Department and the IRS have access to this document and Defendant well knew there was a restitution order arising out of a criminal case involving employment taxes of the Plaintiff.⁴ Once Plaintiff reviewed Defendant's argument in its reply brief (Dkt. No. 24), it was entitled to submit this document in support of, and to meet, its jurisdictional burden.⁵ In addition, Plaintiff had no affirmative obligation to disclose this document to Defendant at the pleading stage of this case, where discovery has not yet started, and therefore Defendant's argument about "previously unseen evidence" should be dismissed.

³ In *Commercial Bank of Peoria*, the informal claim did not even contain the word "refund." In addition, Defendant continues to argue that even if there were valid informal claims, that either the general claims doctrine or the germaneness doctrine must then be applied. Defendant's Response Brief, at 1. Defendant believes that the informal claims doctrine is "free standing" and if its requirements are met there is no necessity to consider any of the additional exceptions (which nonetheless apply in this case) to the variance doctrine. *See Computervision v. United States*, 445 F.3d at 1364-72 (listing four different circumstances when formal compliance is excused).

⁴ The Justice Department restitution summary was available to Defendant. However, the IRS Restitution Information Sheet listing the Financial Litigation Unit case number for application of the restitution payments at issue, Exhibit F (Dkt. No. 16-1), was never seen by Plaintiff until Defendant's motion to dismiss was filed (Dkt. No. 16).

⁵ The proposed Amended Sur-Reply (Dkt. No. 27-1 at 3 n.2) listed an example based upon the Justice Department restitution summary demonstrating that it was impossible to reconcile the Justice Department restitution summary with the Internal Revenue Service's assessments of tax, interest, and penalties for any of the quarters at issue when the Protective Refund Claims were filed.

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff's Amended Motion for Leave to File Sur-Reply Brief in Further Opposition to Defendant's Motion to Dismiss.

Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ Ian M. Comisky
Ian M. Comisky
2000 Market Street, 20th Floor
Philadelphia, PA 19103
(215) 299-2795
(215) 299-2150 (facsimile)
icomisky@foxrothschild.com

Attorneys for Plaintiff

Dated: January 5, 2022

EXHIBIT A

DECLARATION OF JAMES MAHONEY

I, James Mahoney, declare and state as follows:

1. I am a certified public accountant licensed to practice in the Commonwealth of Pennsylvania.

2. From 1972 to 1987, I was employed by the Internal Revenue Service, first as a Revenue Agent and later as an Appeals Officer.

3. From 1987 to 2000, I owned and operated an accounting firm called Brennan and Mahoney LLC.

4. In 2000, I began to work for CBIZ MHM LLC, a national accounting firm. I was employed by CBIZ MHM LLC from 2000 until my retirement in August 2020.

5. I am submitting this declaration at the request of Dougherty Electric, Inc. in connection with its tax refund lawsuit pending in the United States Court of Federal Claims which is captioned *Dougherty Electric, Inc. v. United States*, No. 20-1258T.

6. In November of 2017, CBIZ MHM LLC was retained by Fox Rothschild LLP to assist in providing legal advice to Dougherty Electric, Inc. with respect to certain potential tax refund claims.

7. When CBIZ MHM LLC was retained, we were provided a copy of a check dated December 11, 2015, that Dougherty Electric, Inc. submitted to the Internal Revenue Service in the amount of \$1,534,504.37, for payment of employment taxes. The check had no allocation of the periods to which the payment pertained nor any designation of the funds for taxes, interest, or penalties.

8. Dougherty Electric, Inc. filed an informal refund claim with the Internal Revenue Service on December 7, 2017. Dougherty Electric, Inc. filed a modified refund claim with the

IRS on April 10, 2018. Both the informal refund claim and the modified refund claim were prepared by Fox Rothschild LLP with assistance from CBIZ MHM LLC. Neither of these claims had any schedule attached showing the tax periods to which the claims pertained because CBIZ MHM LLC was unable, from the information then available, to determine how the 2015 payment check had been allocated between the seventeen quarters at issue between 2001 and 2005.

9. On August 16, 2018, Dougherty Electric, Inc. submitted Forms 843 to the IRS perfecting its refund claims. CBIZ MHM LLC again assisted Fox Rothschild LLP with the preparation of those forms. As part of that process, I was able to obtain sufficient information to create a one-page schedule showing the application of the \$1,534,504.37 payment by Form 941 quarter, as follows:

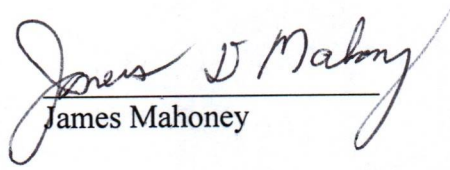
Donaki Dougherty										
Application of the 12/11/2015 payment - Form 941										
Tax period	9/30/2003	12/31/2003	3/31/2004	6/30/2004	9/30/2004	12/31/2004	3/31/2005	6/30/2005	9/30/2005	Total
Payment 12/11/2015	110,746.19	308,632.07	111,821.42	217,030.25	214,368.34	214,596.57	117,677.57	116,975.38	123,056.48	1,534,504.37

This schedule was then attached to each of the Form 843 submissions.

10. The one-page schedule that I created was not attached to the 2015 tax payment because CBIZ MHM LLC had not been retained at that time.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed in Lafayette Hill, Pennsylvania, on December 30, 2021.


James Mahoney

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 2022, the foregoing pleading was served on counsel of record for the United States pursuant to the Court's electronic filing system.

By: /s/ Ian M. Comisky
Ian M. Comisky

Document Removed as Sealed
in the United States Court of
Federal Claims

Appx0316 - Appx0340

In the United States Court of Federal Claims

No. 20-1254

Filed: February 16, 2022

_____)
DOUGHERTY ELECTRIC, INC.,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

ORDER

On February 16, 2022, the Court held a telephonic status conference to discuss the parties’ progress toward settlement. During that status conference, plaintiff requested additional briefing concerning the recent decision in *Brown v. United States*, 22 F.4th 1008 (Fed. Cir. 2022). For good cause shown, this case is **STAYED** until April 22, 2022, at which point the parties **SHALL** file supplemental briefing, if necessary, discussing the impact of *Brown* on this proceeding, pursuant to the following briefing schedule:

1. On or before **April 22, 2022**, plaintiff shall file its supplemental brief;
2. On or before **May 23, 2022** defendant shall file its response brief; and
3. On or before **June 6, 2022**, plaintiff may file its reply brief.

IT IS SO ORDERED.

s/ *Loren A. Smith*

Loren A. Smith,
Senior Judge

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in the United States Court of
Federal Claims

Appx0342 - Appx0357

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

)	
DOUGHERTY ELECTRIC INC.,)	
)	
Plaintiff,	)	Civil Action No. 20-1254 T
vs.	)	(Sr. Judge Loren A. Smith)
)	
THE UNITED STATES,)	
)	
Defendant.)	

PLAINTIFF’S MOTION TO AMEND THE JUDGMENT

Plaintiff respectfully moves the Court, under Rules 59 and 60 of the Rules of the United States Court of Federal Claims, to request that an order be entered on the docket reflecting that Plaintiff’s Amended Motion for Leave to File Sur-reply Brief, (ECF 27), has been granted. It is apparent from the face of the Court’s Opinion and Order, (ECF 57), that the Court considered and rejected the argument made in Plaintiff’s Amended Motion for Leave to File Sur-reply Brief. (ECF 27). The Court apparently granted that motion, rejecting the arguments therein on their merits.

For the reasons set forth in Plaintiff’s accompanying brief, the Court retains ample authority under Rules 59 and 60 to issue, and should issue, a post-Judgment order showing that Plaintiff’s Amended Motion for Leave to File Sur-reply Brief (ECF 27), has been granted.

Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ Ian M. Comisky

Ian M. Comisky
2000 Market Street, 20th Floor
Philadelphia, PA 19103
(215) 299-2795
(215) 299-2150 (facsimile)
icomisky@foxrothschild.com

Attorneys for Plaintiff

Dated: December 28, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 2023, the foregoing pleading was served on counsel of record for the United States pursuant to the Court's electronic filing system.

By: /s/ Ian M. Comisky
Ian M. Comisky

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUGHERTY ELECTRIC, INC.)	
)	
v.	)	No. 1:20-cv-01254-LAS
)	
UNITED STATES OF AMERICA)	

NOTICE OF APPEAL

Notice is hereby given that Plaintiff Dougherty Electric, Inc. appeals to the United States Court of Appeals for the Federal Circuit from the Court’s Opinion and Order dated December 4, 2023 (ECF 56), and the Judgment entered on December 5, 2023 (ECF 57).

Dated: February 1, 2024

Respectfully submitted,

FOX ROTHSCHILD LLP

By: */s/ Ian M. Comisky*
 Ian M. Comisky
 2000 Market Street, 20th Floor
 Philadelphia, PA 19103
 Tel: (215) 299-2795
 Fax: (215) 299-2150
icomisky@foxrothschild.com

*Attorney for Plaintiff
 Dougherty Electric, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2024, the foregoing was filed electronically with the Case Management/Electronic Case Filing System (“CM/ECF”) for the Federal Judiciary. Notice of this filing will be sent to all parties by operation of the CM/ECF system, and the parties to this action may access this filing through CM/ECF.

FOX ROTHSCHILD LLP

By: */s/ Ian M. Comisky*

Ian M. Comisky

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Philadelphia, PA 19103

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icomisky@foxrothschild.com

Attorney for Plaintiff

Dougherty Electric, Inc.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUGHERTY ELECTRIC, INC.)	
)	
v.	)	No. 1:20-cv-01254-LAS
)	
UNITED STATES OF AMERICA)	

AMENDED NOTICE OF APPEAL¹

Notice is hereby given that Plaintiff Dougherty Electric, Inc. appeals to the United States Court of Appeals for the Federal Circuit from the Court’s Opinion and Order dated December 4, 2023 (ECF 56), the Judgment entered on December 5, 2023 (ECF 57), and the Court’s Order dated April 3, 204 (ECF 65).

Dated: May 12, 2024

Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ Ian M. Comisky
 Ian M. Comisky
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 Philadelphia, PA 19103
 Tel: (215) 299-2795
 Fax: (215) 299-2150
icomisky@foxrothschild.com

*Attorney for Plaintiff
 Dougherty Electric, Inc.*

¹ Plaintiff originally filed its Notice of Appeal (ECF 63) on February 1, 2024. At that time, Plaintiff’s Motion to Amend the Judgment (ECF 59) was pending. On February 9, 2024, the Federal Circuit issued an order deactivating the appeal until this Court ruled upon Plaintiff’s Motion to Amend the Judgment. On April 3, 2024, this Court entered an order denying that motion (ECF 65). Plaintiff now files this Amended Notice of Appeal to clarify that its appeal also encompasses the Court’s April 3 Order.

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2024, the foregoing was filed electronically with the Case Management/Electronic Case Filing System (“CM/ECF”) for the Federal Judiciary. Notice of this filing will be sent to all parties by operation of the CM/ECF system, and the parties to this action may access this filing through CM/ECF.

FOX ROTHSCHILD LLP

By: */s/ Ian M. Comisky*

Ian M. Comisky

2000 Market Street, 20th Floor

Philadelphia, PA 19103

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Fax: (215) 299-2150

icomisky@foxrothschild.com

Attorney for Plaintiff

Dougherty Electric, Inc.

CERTIFICATE OF SERVICE

The undersigned attorney for Plaintiff-Appellant certifies that service of the foregoing Corrected Non-Confidential Joint Appendix was made this 12th day of February, 2025, through the Court's electronic filing system. Service of the Corrected Confidential Joint Appendix was made this 12th day of February, 2025, via First Class Mail upon the following counsel:

Rachel I. Wollitzer
U.S. Department of Justice, Tax Division, Appellate Section
P.O. Box 502
Washington, D.C. 2004

By: /s/ Ian M. Comisky
Ian M. Comisky