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

UNITED STATES OF AMERICA, Plaintiff, v. MICHAEL D'ONOFRIO, Defendant.	Case No. 2:25-cv-02298

UNITED STATES' REPLY IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

The United States moved for summary judgment to reduce to judgment federal income tax assessments against Defendant Michael D'Onofrio for his 2004–2009, 2014, 2015, and 2017 income tax years.

D'Onofrio in opposition raises three arguments. First, D'Onofrio argues that the government's suit for 2004–2009 is barred by operation of his Form 906 Closing Agreement because the IRS should have assessed these liabilities immediately. But D'Onofrio expressly waived his right to challenge the timing of the IRS's income tax assessments for these years by executing that very same closing agreement. Second, D'Onofrio contends that the government's tolling analysis is incorrect based on the period between when his offer in compromise was erroneously returned and when it was reopened. However, he again fails to take into account the plain language of the relevant document because the text of his offer in compromise specifically defines when the offer is pending and supports the government's calculation.

Finally, D'Onofrio argues that all tax interest and penalties accrued from January 2020 to July 2023 during the COVID-19 federally declared disaster should be abated based on 26 U.S.C.

§ 7508A. But that statute does not apply to penalties and interest for taxes that became due before the disaster and which continued to accrue during the disaster.

The Court should accordingly grant the United States' motion for summary judgment.

ARGUMENT

I. D'Onofrio's closing agreement forecloses his challenge to the April 2013 assessments made against him.

More than ten years after he signed a closing agreement and with the tax liabilities covered by that agreement still largely owing, D'Onofrio seeks to avoid most of these taxes by arguing that the closing agreement, which he acknowledges is final and conclusive, somehow required that the IRS "immediately" assess his liabilities.[1] (ECF No. 24-1 at 11, 13.) He does not—and cannot— point to any such language in the four corners of the closing agreement or the statute governing the authority to enter these agreements. 26 U.S.C. § 7121(b) (closing agreement should be final and conclusive and in "any suit, action, or proceeding, such agreement, or any determination[or] assessment . . . shall not be annulled, modified, set aside, or disregarded"); *cf. S & O Liquidating P'ship v. Comm'r*, 291 F.3d 454, 459 (7th Cir. 2002) ("if a closing agreement's terms are clear and unambiguous, [the courts] are obligated to enforce the language as it is written, without resort to extrinsic evidence or interpretive devices").

D'Onofrio's nevertheless bases his argument on paragraph 13 of the agreement, which provides that he "waiv[es] all defenses against and restrictions on the assessment and collection of [his] liabilities, including any defense based on the expiration of the period of limitations on

[1] Although couched as an argument about the United States bringing suit beyond the ten-year statute of limitations for collection under 26 U.S.C. § 6502(a)(1), D'Onofrio's limitations argument actually challenges the timing of the tax assessments made against him—specifically that they should have been made earlier.

assessment or collection." (SDF ¶ 21.) This text does not say the IRS must assess his liabilities immediately or even that the agency should. The closing agreement thus expressly bars D'Onofrio from raising the precise argument he does here—that the IRS was limited or restricted to having to assess his taxes immediately after the closing agreement was either signed or counter-signed.

Nor does D'Onofrio cite any law directly supporting why the date of assessments should be deemed to have occurred on the date he signed a closing agreement. Instead, he cites case law relating to waivers under 26 U.S.C. § 6213(d). (*See, e.g.*, ECF No. 24-1 at 12 (citing *Ulrich v. Commissioner*, 585 F.3d 1235, 1237 (9th Cir. 2009) (regarding signature of a form consenting to "immediate assessment and collection")). In such cases, however, and where the taxpayer consents to "immediate assessment," which did not occur here, the IRS is authorized, but not required, to immediately proceed to assessment, and if it does not, the taxpayer's remedy in the law is for interest to be suspended for a certain period. *See Ulrich*, 585 F.3d at 1237 ("if a taxpayer files a [§ 6213(d)] waiver, the IRS does not have to wait before initiating collection, and the taxpayer does not have to pay the interest that would otherwise accrue during the waiting period [before assessment]" (citing *United States v. Price*, 361 U.S. 304, 307–09 (1960) (noting that the purpose of the § 6213(d) waiver is to allow a taxpayer who does not wish to contest the underlying liability to avoid accruing interest)).

Nowhere does it state that the date of assessment should be deemed to have occurred at the earliest possible time it could be done. *Cf. United States v. Bishop*, 570 F. App'x 224, 226 (3d Cir. 2014) (although the IRS is authorized to assess immediately, the actual assessment may be delayed so that the date of assessment is not the date the return was filed); *see also United States v. Isley*, 356 F. Supp. 2d 391, 407 (D.N.J. 2004) ("The time of assessment is not the date

the tax payer submitted his voluntary tax filing, but rather is controlled by statute"). To argue otherwise is to raise an equitable argument under the doctrine of laches that the IRS did not act quickly enough. But sovereign immunity bars asserting laches against the United States. *Dial v. C.I.R.*, 968 F.2d 898, 904 (9th Cir. 1992); *cf. United States v. Admin. Enters., Inc.*, 46 F.3d 670, 672–73 (7th Cir. 1995) ("there is no better illustration of the enforcement of a sovereign right than the use of compulsory process to determine liability for unpaid taxes").

In any event, even if the closing agreement did not bar D'Onofrio's assessment challenge, it would still be unavailing because the IRS has three years to assess a tax after a return is filed. *See* 26 U.S.C. § 6501(a). D'Onofrio started the voluntary disclosure process in November 2010, filed the returns in March 2011, and the income tax assessments were made in April 2013. The IRS accordingly timely assessed his taxes under § 6501(a) and D'Onofrio's argument that the instant suit is untimely fails.

II. D'Onofrio offer in compromise defines when it was pending and this suit is timely

D'Onofrio next contends that the government's tolling analysis is incorrect because it does not take into account the period between when his September 1, 2016 offer in compromise was erroneously returned (on December 28, 2016) and when the offer was approved to be reopened (on February 2, 2017). According to D'Onofrio, during this period, the offer in compromise was not "pending" as set forth in 26 U.S.C. § 6331(k)(1)(A), which provides for tolling while an "offer-in-compromise . . . is pending."

While the OIC is pending, the IRS cannot levy. D'Onofrio reached out to the IRS after December 28 and asked the IRS to correct its error in returning the offer in compromise, and the IRS complied. Submitting a new offer generally required another non-refundable application fee

and could re-start the clock on the two-year period by which the IRS had to act or have the offer be deemed accepted. 26 U.S.C. § 7122(f). D'Onofrio cannot have the benefit of his request and then complain the IRS gave him what he asked. *Cf. Lowenstein v. United States*, 27 Fed. Cl. 38, 50 (1992), *aff'd*, 6 F.3d 786 (Fed. Cir. 1993) (applying doctrine of equitable estoppel against taxpayer based on written waiver). Courts have held that offers in compromise are contracts and are to be governed by general principles of contract law. *See, e.g.*, *Dutton v. Comm'r*, 122 T.C. 133, 138 (2004). "An offeree's power of acceptance is terminated by his rejection of the offer, unless the offeror has manifested a contrary intention." Restatement (Second) of Contracts § 38(1) (1981).[2] Here, D'Onofrio manifested a contrary intention, and he thus should not be able to now retroactively argue that he did in fact want his offer in compromise to be returned now that that would work in his favor.

In any event, the September 1, 2016 offer, submitted and signed by D'Onofrio on a Form 656 (Offer in Compromise) last revised in March 2009 (Supplemental Declaration of Rita Dalton ¶¶ 7–8, Ex. 202 (Form 656) at 2 (section V)), defines when the offer is deemed to be "pending." *Cf. In re Romagnolo*, 269 B.R. 63, 66 (M.D. Fla. 2001), *aff'd sub nom. United States v. Romangnolo*, 37 F. App'x 979 (11th Cir. 2002); *In re Nader*, No. 97-30043DWS, 1999 WL

[2] Federal common law is used to interpret federal contracts. *See, e.g.*, *Moore v. United States Dep't of State*, 351 F. Supp. 3d 76, 88–89 (D.D.C. 2019); *Yee v. Jewell*, 228 F. Supp. 3d 48, 53–54 (D.D.C. 2017). To determine the federal common law, courts look to the Restatement (Second) of Contracts because its principles "represent the prevailing view among the states . . . ." *Bowden v. United States*, 106 F.3d 433, 439 (D.C. Cir. 1997); *Curtin v. United Airlines, Inc.*, 275 F.3d 88, 94 (D.C. Cir. 2001); *Deutsche Bank Nat'l Tr. Co. v. FDIC*, 109 F. Supp. 3d 179, 197 (D.D.C. 2015). Even if state law applied, it would make no difference as "Pennsylvania courts regularly employ the Restatement (Second) of Contracts when resolving contract disputes." *Catawissa Twp. v. Midland Asphalt Materials, Inc.*, No. 4:24-CV-00280, 2024 WL 2159570, at *4 (M.D. Pa. May 14, 2024) (quoting *Hart v. Arnold*, 2005 PA Super 328, 884 A.2d 316, 333 (Pa. Super. 2005), *appeal denied*, 587 Pa. 695, 897 A.2d 458 (Pa. 2006)).

627394, at *6 (Bankr. E.D. Pa. Aug. 16, 1999) (in submitting the OIC on Form 656, the taxpayer "accepted the IRS's construction of pending as stated on" the form). The Form 656 specifically provides that "[t]he offer is pending starting with the date an authorized IRS official signs the form." (Ex. 202 (Form 656) at 2 (section V).) This is the date that the IRS uses for its statute of limitations calculations and what is reflected in the transcripts.[3] (Supp. Dalton Decl. ¶ 10.) To the extent that D'Onofrio could be deemed to have "re-offered" the September 1, 2016 offer in compromise, the offer in compromise that the IRS considered was the version that had already been signed by an authorized IRS official back on September 1, 2016. (Ex. 201, entry at 2/3 (offer in compromise transferred); Supp. Dalton Decl. ¶¶ 11–13.)

Accordingly, a part of the bargain that his September 1, 2016 would be reopened was that it would be deemed to be "pending" as of the date an IRS official signed the form, and thus D'Onofrio's argument to the contrary fail. *Cf. In re Romagnolo*, 269 B.R. at 66 (looking to the terms of the offer in compromise for the meaning of "pending").

III. Section 7508A(a) and (d) do not require that penalties and interest which became due before a declared disaster and which accrued during the disaster be disregarded.

D'Onofrio finally argues that all penalties and interest accrued on his tax liabilities (liabilities that relate to years as far back as 2004) during the 3.5 years of the COVID-19

[3] In this case, the September 1, 2016 offer in compromise at issue was actually sent to the IRS and received on or about August 30, 2016. (ECF doc. 27-2 (Ex. 19 ICS History), entry at 8/30/2016 ("POA forwarded Form 656 submitted an OIC on behalf of TP").). The phrase "Received offer in compromise" given in the account transcripts are, in this case, slightly imprecise when it provides less information than what is on the TXMODAs. *Cf. United States v. Boufarah*, No. 25-1248, 2026 WL 579388, at *1 (3d Cir. Mar. 2, 2026) (describing "account transcripts" as "less comprehensive [than TXMODA transcripts] but includ[ing] plain-language descriptions of each action it lists.").

pandemic (January 2020 through July 2023) should be abated. (ECF No. 24-1 at 14–19.) Again, D'Onofrio's argument is meritless.

Subsection (a) of the version of § 7508A that D'Onofrio cites is plain, providing that:

> (a) In general.-- . . . the Secretary *may* specify a period of *up to 1 year* that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer--
>
> (1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor . . . ,
>
> (2) the amount of any interest, penalty, additional amount, or addition to the tax periods after such date,

26 U.S.C. § 7508A(a)(2) (emphasis added) (2020 version).[4]

This subsection does not require that the penalties and interest on all liabilities be abated but instead provides that such relief is discretionary and could only be given for up to one year, not the 3.5 years D'Onofrio argues for. Such discretionary relief has not been granted by the Secretary here.

And although D'Onofrio states that IRS guidance and specifically IRS Notice 2020-23 provided for the blanket abatement of interest, penalty, and addition to tax for all taxes during the COVID-19 pandemic, (ECF No. 24-1 at 18), a closer inspection of that notice reveals that such abatements were to be done with respect to certain tax-related acts (such as filing and payment) *that were postponed due to the pandemic*. In other words, if a filing or payment deadline for a certain tax period was postponed due to the pandemic, then the calculation of interest, penalty, and addition to tax for that period were also correspondingly disregarded for a certain time. *See*

[4] The acts described in § 7508(a)(1) include, but are not limited to, (A) filing tax returns; (B) payment of taxes; (C) filing a petition with or a notice of appeal from Tax Court; . . . (G) assessment of taxes . . . ; (I) collection by the Secretary; and (J) bringing suit by the United States. *Id.* (effective 2020).

IRS Notice 2020-23 ("As a result of the postponement of the due date for filing Specified Forms and making Specified Payments, the period beginning on April 1, 2020, and ending on July 15, 2020, *will be disregarded in the calculation of any interest, penalty, or addition to tax for failure to file the Specified Forms or to pay the Specified Payments postponed by this notice*." (emphasis added)). D'Onofrio's taxes were due to be fully paid by April 15 of the following years (i.e., 2005 to 2010, 2015, 2016, 2018), all well before the pandemic. 26 U.S.C. § 6151(a) (taxes must be paid in full by the time the tax return is first due).

For similar reasons, D'Onofrio reliance on § 7508A(d) fails. As is relevant here, § 7508A(d) in 2020 provided:

> (1) In general.-- In the case of any qualified taxpayer, the period--
>
> > (A) beginning on the earliest incident date specified in the declaration to which the disaster area referred to in paragraph (2) relates, and
> >
> > (B) ending on the date which is 60 days after the latest incident date so specified,
> >
> > shall be disregarded in the same manner as a period specified under subsection (a).

26 U.S.C § 7508A (effective in 2020).

Nowhere in this version of § 7508A(d) does it require that the IRS abate a taxpayer's penalties and interest for taxes that became due before a declared disaster and that continued to accrue during that disaster.

Instead, consistent with the IRS Notice that D'Onofrio cites, the Treasury Regulations at 26 C.F.R. § 301.7508A-1(b)(2) (2020 version) clarify this situation, providing that "[w]hen an affected taxpayer is required to perform a tax-related act by a *due date that falls within the postponement period*, the affected taxpayer is eligible for postponement of time to perform the

act until the last day of the period." (emphasis added). Two examples from the regulations at 26 C.F.R. § 301.7508A-1(f) specifically address a similar situation to the one here, explaining that a taxpayer under § 7508A would both remain subject to failure to pay penalties and interest if the associated due date of the return "preceded the postponement [or disregarded] period." *Id.* (2020 version) at Examples 2 ("The due date for payment of Corporation X's 2005 income tax preceded the postponement period. Therefore, Corporation X is not entitled to the suspension of interest or penalties during the disaster period with respect to its 2005 income tax liability.") and 6(iii) ("However, the payment due date, April 15, 2009, preceded the postponement period. Thus, [the taxpayer] will continue to be subject to failure to pay penalties and accrual of interest during the postponement period".)

Accrual of interest and penalties on taxes which were assessed well before the disregarded period are thus not affected under § 7508A. And to the extent that D'Onofrio now argues that subsection § 7508A(d)(1) indicates that all the time-sensitive acts to which the Secretary could use his discretion to postpone under subsection (a) automatically apply to subsection (d), that would also mean that every act that the Secretary could possibly postpone would receive a mandatory extension. This would include government acts such as assessment of taxes, collection, and bringing suit. *See* § 7508(a)(1)(G), (I), and (J) (effective 2020).

D'Onofrio reliance on *Abdo v. Comm'r of Internal Revenue*, 162 T.C. 148, 155 (2024) and *Kwong v. United States*, 179 Fed. Cl. 382, 389 (2025) additionally misses the mark, as those cases are not binding authority and inapposite, dealing with the act of filing a petition in Tax Court or a refund suit in federal court. *Abdo* held that a petition to the Tax Court that would otherwise be untimely was not because it was filed in the first 60 days of the pandemic. *Abdo*, 162 T.C. at 156-57, 169. *Kwong* held that the time to file a refund suit that opened during the

pandemic (October 2020) was postponed. *Kwong*, 179 Fed. Cl. at 385–388.[5] IRS Notice 2020-23 similarly deals with certain payment and filing obligations.

D'Onofrio's contention that he is entitled to an abatement of penalties and interest under § 7508A therefore remains unavailing.

CONCLUSION

For the foregoing reasons, the Court should grant the United States' motion for summary judgment.

Dated: April 10, 2026

Respectfully submitted,

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[5] A stipulated judgment has been entered in *Kwong* and the time for the government to appeal that judgment is still running. As explained in more detail in its opposition to D'Onofrio's motion for summary judgment, the United States's position is that *Kwong* was wrongly decided. (ECF No. 30 at 9–11.) If the Court is considering following *Kwong* and holding the 3.5-year mandatory postponement period applies, the United States respectfully requests an opportunity to provide supplemental briefing.

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all registered to receive it.

/s/ Stephen S. Ho
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