IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

WINTON TRANSPORTATION, LLC	§	
	§	JURY DEMAND
	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. 1:25-cv-00235
	§	
UNITED STATES OF AMERICA	§	
	§	
Defendant.	§	

COMPLAINT

Winton Transportation, LLC (hereinafter "Plaintiff or "Winton") by and through its undersigned counsel and files this Complaint against Defendant, United States of America ("Defendant" or "United States"), and alleges as follows:

NATURE OF ACTION

1. Plaintiff files this civil action for a refund of amounts paid to the IRS under 26 U.S.C. § 7422.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1340 and § 1346, and venue is proper under 28 U.S.C. § 1391 and § 1402.

THE PARTIES

3. Plaintiff is a limited liability company in good standing with the State of Ohio whose principal place of business is 9900 Princeton Glendale Road, Suite 201, West Chester, OH 45246.

4. Defendant is the United States of America and may be served by mailing two copies of this Complaint by certified mail to Kelly A. Norris, Acting United States Attorney for the Southern District of Ohio, 303 Marconi Boulevard, Suite 200, Columbus, Ohio 43215, and mailing two copies of the Complaint by certified mail to the Honorable Pamela Bondi, Attorney General of the United States, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

THE NATURE OF THE TAX ISSUE

5. This suit arises under the Internal Revenue Code of the United States for the refund of taxes, interest and penalties overpaid by Plaintiff because of its eligibility for the Employee Retention Credit ("ERC").

6. Winton is a transportation company that provides non-emergency medical transportation services, pupil transportation and other charter services to Fairfield, Dayton, Cincinnati and Columbus, Ohio areas.

7. Winton continued to provide transportation services throughout the COVID-19 pandemic during 2019 through 2021, except during the government mandated school closure period.

The Employee Retention Credit

8. The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted to encourage businesses to keep employees on their payroll by providing them an Employee Retention Credit.[1] It also was enacted to make sure workers were not forced to choose between their paychecks and the public health measures needed to combat the Coronavirus. The ERC is a refundable tax credit for certain eligible businesses and tax-exempt

[1]*See* The Coronavirus Aid, Relief and Economic Security Act (CARES Act), Pub. L. No 116-136, 134 Stat. 281 (2020), as amended by section 206 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020).

organizations with employees and whose business operations were affected during the COVID-19 pandemic.

9. Winton's refundable ERCs for the employment tax quarters at issue are as follows:

Tax Period	Refundable Employee Retention Credit
Taxable Period Ending March 31, 2021	$999,038.25
Taxable Period Ending June 30, 2021	$1,307,438.87
Total	$2,306,477.12

General Requirements to Claim the ERC

10. The initial threshold requirement to qualify for the Employee Retention Credit requires an employer experience either:

(a) A full or partial suspension of operations due to government order due to COVID-19 during any taxable quarter; *or*

(b) A significant decline in gross receipts.

11. If either condition is met, the employer may be eligible for the ERC based on additional factors, such as decline in gross receipts, and the amount of qualified wages.

FACTUAL BACKGROUND

12. During the taxable periods at issue, Winton utilized Sheakley HR, LLC ("Sheakley") for its payroll processing and reporting. Sheakley is a Professional Employer Organization ("PEO").[2] PEOs assume the responsibility of filing and paying employment taxes of its clients under the PEO's Employer Identification Number.[3]

[2] PEOs enter into a contractual co-employment agreement with its clientele and PEOs are treated as agents of their clients for federal tax purposes. 26 U.S.C. § 3504.

[3] Sheakley files a Schedule R "Allocation Schedule for Aggregate Form 941 Filers" so the IRS can identify the amounts specific to each client.

13. Winton – via Sheakley – employed an average of 500 or fewer full-time employees during 2019 through 2021.[4]

14. Winton – via Sheakley – paid qualified wages to its employees during 2020 and 2021.

15. Winton – via Sheakley – paid qualified health care expenses for its employees during 2020 and 2021.

16. Winton is an "eligible employer" under all the applicable statutory provisions, including the Internal Revenue Code and the CARES Act, as amended by the COVID-related Tax Relief Act ("COVID Relief Act") and the American Rescue Plan Act ("ARPA") for the employment tax quarters ending March 30, 2021 and June 30, 2021.

17. Winton – via Sheakley – overreported tax amounts on its Forms 941 "Employer's Quarterly Federal Tax Returns" ("Form 941") for the employment tax quarters ending March 30, 2021 and June 30, 2021.

Winton Qualifies for the ERC for the 1st Quarter 2021

18. Winton – via Sheakley – timely filed its Form 941 for the taxable period ending March 31, 2021 on or before April 30, 2021.

19. Winton – via Sheakley – timely paid all amounts due for the employment tax period ending March 31, 2021.

[4] If an employer had over five hundred (500) employees pursuant to the CARES Act as amended by the Relief Act, they are deemed to be large eligible employers. Employers are deemed small eligible employers if the average number of full-time employees during 2019 was not greater than five hundred (500).

20. Winton experienced a significant decline in gross receipts of 20.437% pursuant to the gross receipts test outlined in IRS Notice 2021-23.[5] Winton's gross receipts comparison is as follows:

Q1 2021 Gross Receipts	Q1 2019 Gross Receipts	Decline	Percentage Decline
$4,331,519	$5,444,155	($1,112,636)	(20.437%)

21. Winton – via Sheakley – filed a Form 941-X for the taxable period ending March 31, 2021 to claim the refunds related to the ERC in the amount of $999,038.25. The claim was filed within the three-year period proscribed by 26 U.S.C. § 6511.

22. More than six months have elapsed since Plaintiff filed its Claim for Refund.

23. Plaintiff has not been notified that the IRS has allowed its claim.

Winton Qualifies for the ERC for the 2nd Quarter 2021

24. Winton – via Sheakley – timely filed its Form 941 for the taxable period ending June 30, 2021 on or before July 31, 2021.

25. Winton – via Sheakley – timely paid all amounts due for the employment tax period ending June 30, 2021.

[5] IRS Notice 2021-23 states: "…an employer is an eligible employer with respect to any calendar quarter for which its gross receipts … for the calendar quarter are less than 80% of its gross receipts for the same quarter in 2019." *See* IRS Notice 2021-23 at p. 5-6.

26. Winton experienced a significant decline in gross receipts of 20.437% pursuant to the alternative quarter test outlined in IRS Notice 2021-23.[6] Winton's gross receipts comparison is as follows:

Q1 2021 Gross Receipts	Q1 2019 Gross Receipts	Decline	Percentage Decline
$4,331,519	$5,444,155	($1,112,636)	(20.437%)

27. Winton – via Sheakley – filed a Form 941-X for the taxable period ending June 30, 2021 to claim the refunds related to the ERC in the amount of $1,207,438.87. The claim was filed within the three-year period proscribed by 26 U.S.C. § 6511.

28. More than six months have elapsed since Plaintiff filed its Claim for Refund.

29. Plaintiff has not been notified that the IRS has allowed its claim.

FIRST CAUSE OF ACTION

30. Plaintiff incorporates paragraphs 1 through 29 as though fully set forth herein.

31. Pursuant to 26 U.S.C. § 7422, a refund suit for the recovery of income taxes can be commenced in District Court after a claim for refund has been filed with the Secretary. Under 26 U.S.C. § 6532, no suit pursuant to 26 U.S.C. § 7422 shall begin prior to the expiration of 6 months from the date of filing the claim for refund nor after the expiration of 2 years from the date the IRS notifies the taxpayer that its claim is disallowed.

[6] IRS Notice 2021-23 states: "For the second calendar quarter of 2021, an employer may elect to use its gross receipts test for the first calendar quarter 2021 compared to those for the first calendar quarter of 2019 to determine if the decline in gross receipts test is met." *See* IRS Notice 2021-23 at p. 7.

32. Plaintiff has satisfied these elements. A claim for refund was filed within three years of the original employment tax returns and more than 6 months have elapsed since filing the claim for refund.

33. Plaintiff qualifies for the ERC credit for the taxable period ending March 31, 2021 in the amount of $999,038.25.

34. Plaintiff qualifies for the ERC credit for the taxable period ending June 30, 2021 in the amount of $1,307,438.87.

35. Plaintiff is entitled to damages for any quarter in which penalties were assessed as a result of its qualification for ERC credits.

36. Plaintiff has been, and continues to be, damaged by the refusal of the IRS to process the Form 941-X for the taxable periods ending March 31, 2021 and June 30, 2021 and issue the Employee Retention Credit.

WHEREFORE, Plaintiff pray this Court order the United States to:

- Issue a refund in the amount of $999,038.25, plus applicable interest, for the Employee Retention Credit for the taxable period March 31, 2021;
- Issue a refund in the amount of $1,307,438.87, plus applicable interest, for the Employee Retention Credit for the taxable period ending June 30, 2021;
- Award Plaintiff damages equal to any erroneously assessed penalties resulting from Plaintiff's qualification for the Employee Retention Credit; and
- Other such relief as is just.

Respectfully submitted,

Dated: April 11, 2025

By: /s/ Alex S. Rodger
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