IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ALLAN DOUGLAS WILSON,

Plaintiff,

v.

DERRICK BRENT, et al.,

Defendants.

Civil Action No. 25-3561 (RDM)

PLAINTIFF'S SURREPLY TO THE UNITED STATES' REPLY AND OPPOSITION TO CROSS-MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

May the following Surreply be considered by the Court in response to the degree of inaccuracies and procedural inconsistencies demonstrated in Defendants' Reply and Opposition to Cross-Motion for Summary Judgment (ECF No. 19, filed May 18, 2026). As this litigation was commenced in good faith, Plaintiff may provide any additional evidence required by the Court to make a determination, including the filed 2020 federal income tax return, having identified no further issue of complaint beyond those set out herein.

What the government is proposing in its Reply is simple but underhanded: that it is proper for government agencies to take money from American citizens engaged in activities as common as filing taxes and applying for patents, and to retain those funds without accounting or services rendered. If the government's assessment is correct, the IRS may arbitrarily deny tax credits that fall squarely within statutory filing periods extended to ten years when foreign taxes have been paid, and payments remitted to agencies may disappear with no proper accounting and no services provided in return.

Counsel for the government identified a procedural irregularity and has now appeared as a jack-in-the-box to refute claims that were admitted by failure to contest in pleadings and to challenge a statutory basis for complaint that was wholly unaddressed in the agency's own dispute process and entirely absent from responsive pleading. The belated attempt to mount a defense is neither accurate nor procedurally appropriate. The procedural irregularity counsel cites under Fed. R. Civ. P. 56(c)(1)(A) and Local Rule 7(h)(1) is irrelevant for several reasons. The majority of the facts in the Complaint were uncontested by the Defendants and therefore are not required to be re-substantiated. Among the uncontested facts are those referring to Plaintiff's 2020 federal income tax return, which was admittedly filed and assessed without errors. Defense counsel has in fact admitted to over one-third of the 187 numbered statements of fact in the Statement of Facts filed in support of Plaintiff's Cross-Motion, requiring no additional substantiation for those 70 paragraphs. The remaining facts in dispute include 53 paragraphs addressing matters never alleged in Section IV of the Complaint (ECF No. 1, ¶¶ 10–49) and therefore never subject to a responsive pleading obligation.

In summary, the government is proposing, through its attorneys, a resolution in which no laws are applied and no refunds are paid. Government counsel profits while inflating matters concerning straightforward statutory applications, casting doubt on established facts, and feeding the flames of litigation over matters that can be resolved by applying existing law as written. Plaintiff respectfully requests that this Court apply the law, credit the admitted facts, and grant the relief sought.

I. THE SUBSTITUTION OF THE UNITED STATES AS DEFENDANT DOES NOT EXTINGUISH THE CLAIMS AGAINST THE INDIVIDUALLY NAMED DEFENDANTS

Counsel proceeds as though the United States has been properly and fully substituted as the sole defendant, without addressing the individually named defendants, their respective official functions, or the specific claims asserted against each in the Complaint. The Complaint names Derrick Brent in his official capacity as Acting Director of the United States Patent and Trademark Office and Frank Bisignano in his official capacity as Commissioner of Internal Revenue (Complaint ¶¶ 7–8), as well as Does 1 through 10 in their individual capacities pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) (Complaint ¶ 9). The Complaint asserts separate counts under the Administrative Procedure Act, the Declaratory Judgment Act, and Bivens that implicate each named defendant in distinct and particularized ways. Counsel's footnote 3 acknowledges that the IRS Commissioner's authority was only delegated as of October 20, 2025, which is a matter going to the identity of the proper official-capacity defendant, not a basis for dismissal of claims concerning agency conduct. The individual-capacity Bivens defendants whose personal involvement in the unlawful denials is documented in the Complaint (¶¶ 20–26, 43–47) remain parties to this action.

II. FACTS ADMITTED BY FAILURE TO CONTEST IN RESPONSIVE PLEADING CANNOT NOW BE DISPUTED

The Defendants' Answer or responsive pleading to the Complaint (ECF No. 1) did not deny the 94 factual paragraphs comprising Section IV at paragraphs 10 through 49. Under Federal Rule of Civil Procedure 8(b)(6), allegations not denied in a responsive pleading are admitted. Having admitted those facts, the Defendants cannot manufacture disputes at the summary judgment stage as to matters they accepted as true in pleading.

Counsel argues that Plaintiff's Statement of Facts contains none of the required record citations. This argument is undermined by the government's own Response to Statement of Facts (ECF No. 19-1), which admits 70 of the 187 numbered paragraphs, representing 37% of the entire submission. The government's capacity to admit 70 paragraphs confirms that the record was sufficiently identifiable. Where citation was omitted, it was in large part because the underlying documents, including the 2020 federal income tax return and accompanying schedules, are in the exclusive custody of the Internal Revenue Service, which received, processed, assessed, and then submitted the account transcript to this Court as its own exhibit at ECF No. 13-2. A party cannot be required to cite a record to the very agency that generated, maintains, and submitted it. The Complaint with Exhibits A through E was filed with the Court on October 15, 2025 (ECF No. 1) and constitutes the initial evidentiary record[1]. Exhibit A is the IRS denial notice dated September 5, 2025, disallowing the Recovery Rebate Credit on the ground of the three-year limitation period (Complaint ¶ 40). Exhibit B is the facsimile confirmation of the Formal Written Protest transmitted September 8, 2025 (Complaint ¶ 41). Exhibit C is the Formal Written Protest itself, quoting 26 U.S.C. § 6511(d)(3)(A) in full (Complaint ¶ 42). Exhibit D is the email from radhelpdesk@uspto.gov dated October 8, 2025, attaching the USPTO refund denial decision (Complaint ¶ 17). Exhibit E is the USPTO refund denial letter dated September 10, 2025, citing 37 C.F.R. § 1.26(a) under Refund Request ID REFND-20250902-02552 (Complaint ¶ 16).

[1] The Complaint filed October 15, 2025 (ECF No. 1) with Exhibits A through E is documented and accessible at https://legalascent.com/assets/US5.pdf.

III. THE IRS HAS ALREADY APPLIED THE RELEVANT STATUTORY RULES IN PART AND THE TRANSCRIPT CONFIRMS AN OVERPAYMENT

Counsel's Reply states that the account transcript "does not account for overpayments like this one which are time-barred as a matter of law." (ECF No. 19 at 5.) This assertion inverts the evidentiary significance of the government's own certified business record. The IRS account transcript submitted at ECF No. 13-2 is a certified official record authenticated under Federal Rule of Evidence 902(11). It reflects the following agency actions already taken by the IRS: Transaction Code 766, dated April 15, 2021, confirming the Recovery Rebate Credit of negative $1,800.00 applied to Plaintiff's account; Transaction Code 167, dated August 11, 2025, reversing a previously assessed late-filing penalty; and Transaction Code 197, dated August 11, 2025, reversing previously assessed late-payment interest. The net account balance shown on the transcript is negative $1,238.55, representing money owed to the Plaintiff under the IRS's own accounting.

The IRS did not merely process the return. It affirmatively applied the Recovery Rebate Credit and then affirmatively reversed penalties and interest it determined were incorrectly assessed. These are not passive entries. They represent considered agency determinations reflected in the official record. The IRS's own assessment, confirmed by notice CP21B dated August 11, 2025 (Complaint ¶ 39), indicates a refund of $1,238.55 owed to Plaintiff. The government has admitted every transaction code and every corresponding amount in its Response to the Statement of Facts. It has offered no alternative accounting that reconciles the $1,238.55 credit balance on the certified transcript with the September 5, 2025 denial notice at Exhibit A to the Complaint, which claims zero balance and no refund due. The transcript and the denial notice cannot both be correct. The transcript is the certified record. The denial notice is the error.

Counsel further states that "to the extent that the transcript and the Internal Revenue Code are inconsistent, the Code (and here, § 6511(b)(2)) controls." (ECF No. 19 at 5.) The Code and the transcript are not inconsistent. The transcript reflects credits properly applied under the Code. It is the IRS's administrative denial that is inconsistent with both the transcript and the Code. Section 6511(b)(2) does not override a ten-year filing period established by Congress under Section 6511(d)(3)(A); it operates within the three-year framework that Section 6511(d)(3)(A) expressly displaces.

IV. SECTION 6511(D)(3)(A) GOVERNS AND THE TEN-YEAR PERIOD APPLIES TO THIS CLAIM

Counsel's central legal argument is that the refund Plaintiff seeks is attributable solely to the CARES Act and the Consolidated Appropriations Act and not to any Canadian taxes Plaintiff paid, and that Section 6511(d)(3)(A) therefore does not apply. (ECF No. 19 at 3-4.) This argument misreads both the statute and the record.

Section 6511(d)(3)(A) provides an extended ten-year limitation period when "the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed." 26 U.S.C. § 6511(d)(3)(A). The operative inquiry is whether the claim "relates to" an overpayment "attributable to" foreign taxes. The overpayment here arises from the combined operation of the foreign tax credit for Canadian income taxes paid and the Recovery Rebate Credit on the same 2020 return. As alleged at Complaint ¶ 30, during tax year 2020, Plaintiff received retirement income from Canada on which he paid Canadian income taxes, which were properly reported on IRS Forms 1040 Schedule A and 1040 Schedule 1 and were creditable against Plaintiff's U.S.

tax liability pursuant to the United States-Canada Income Tax Convention and 26 U.S.C. § 901. As further alleged at Complaint ¶ 31, those Canadian income taxes reduced Plaintiff's U.S. tax liability dollar-for-dollar under treaty provisions, creating an overpayment situation when considered in conjunction with the Recovery Rebate Credit claim. The claim both relates to and is attributable to the foreign taxes paid, because without the foreign tax credit reducing the tax liability to zero, no overpayment would exist and the credit would be applied against an outstanding balance rather than returned as a refund.

Crucially, this statutory basis was raised explicitly in the Formal Written Protest of September 8, 2025 (Exhibit C to the Complaint; Complaint ¶¶ 41-42), which quoted Section 6511(d)(3)(A) in full and was transmitted to the IRS International Tax Account Issues office by facsimile at (681) 247-3101, with confirmation at Exhibit B. The IRS did not respond. It did not raise any objection to the applicability of the ten-year period in any communication with the Plaintiff. As alleged at Complaint ¶ 43, on October 14, 2025, Plaintiff contacted the IRS to follow up on his formal protest and spoke with IRS Agent Mrs. Branch (Agent Number 1004595103), who stated that there was a three-year limit on eligibility for the Recovery Rebate Credit and refused Plaintiff's request for the $1,800.00 credit plus interest (Complaint ¶ 45). When Plaintiff requested the specific legal citation for the alleged three-year limitation, Agent Mrs. Branch was unable to provide any statutory or regulatory citation but nevertheless refused the credit, stating that the system refused the refund (Complaint ¶ 46). Defense counsel did not address Section 6511(d)(3)(A) at all in the original Motion to Dismiss. The government now raises it for the first time in a Reply, after having conceded its existence and text in the Response to the Statement of Facts.

Counsel relies on Schaeffler v. United States, 889 F.3d 238, 244 (5th Cir. 2018), for the proposition that the overpayment must be "due to, caused by, or generated by" foreign taxes. Even under that standard, the Canadian taxes paid are a but-for cause of the refund situation. Without the foreign tax credit, the Recovery Rebate Credit would offset an outstanding tax balance and no refund would result. The two credits operate together on the same return and the foreign tax credit is a necessary precondition to the disbursement outcome.

Counsel's own statement in the Reply confirms the outcome: "as long as Plaintiff was a qualified individual, he would have been entitled to $1,800 in EIPs even if he had not paid any foreign taxes." (ECF No. 19 at 4.) This is not a refutation. It is an admission of eligibility. Counsel concedes qualification while denying disbursement, which is precisely the arbitrary conduct the Fifth Amendment and the APA prohibit.

V. PLAINTIFF SATISFIES ALL STATUTORY REQUIREMENTS FOR THE 2020 RECOVERY REBATE CREDIT

The Internal Revenue Service identifies the requirements for claiming the 2020 Recovery Rebate Credit as follows: the taxpayer must be a United States citizen or resident alien, must not be claimed as a dependent on another person's 2020 tax return, and must possess a Social Security umber valid for employment in the United States[2]. Plaintiff is a United States citizen, as alleged at Complaint ¶ 6 and confirmed by the IRS denial notice at Exhibit A to the Complaint, which reflects Plaintiff's Social Security number as ***-**-0029. He is not a dependent on any other

[2] Internal Revenue Service, 2020 Recovery Rebate Credit – Topic B: Eligibility for Claiming a Recovery Rebate Credit on a 2020 Tax Return, available at https://www.irs.gov/newsroom/2020-recovery-rebate-credit-topic-b-eligibility-for-claiming-a-recovery-rebate-credit-on-a-2020-tax-return (last updated April 2022).

person's return (Complaint ¶ 6). He filed a 2020 federal income tax return that was received, assessed, and processed by the IRS, confirmed by the account transcript at ECF No. 13-2 and the August 11, 2025 assessment reflected in Transaction Codes 167 and 197 therein (Complaint ¶ 39). The government has admitted that the Recovery Rebate Credit was applied to Plaintiff's account via Transaction Code 766. Footnote 1 of the government's Reply identifies the three categories of disqualifying individuals under 26 U.S.C. §§ 6428(d) and 6428A(d): nonresident aliens, dependents on another taxpayer's return, and estates or trusts. (ECF No. 19 at 4 n.1.) Plaintiff falls into none of these categories. No specific disqualifying condition applicable to this Plaintiff has been identified. Speculative denial of eligibility, without evidence, is insufficient to defeat summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

VI. THE FOREIGN TAX CREDIT VERSUS DEDUCTION ISSUE IS UNSUPPORTED BY THE RECORD

Counsel suggests that Plaintiff may have claimed a foreign tax deduction rather than a foreign tax credit on IRS Form 1116, and that a deduction would remove the claim from Section 6511(d)(3)(A). (ECF No. 19 at 6, citing Trusted Media Brands, Inc. v. United States, 899 F.3d 175, 179-80 (2d Cir. 2018).) Counsel grounds this argument in a single parenthetical in Complaint ¶ 37, which states that Canadian taxes were "already deducted," and in the reporting of those taxes on Schedules A and 1 rather than Form 1116.

This argument lacks any evidentiary foundation in the record and contradicts the Complaint's own allegations. Complaint ¶ 30 states that the Canadian income taxes were "creditable against Plaintiff's U.S. tax liability pursuant to the United States-Canada Income Tax Convention and 26 U.S.C. § 901." The Formal Written Protest at Exhibit C to the Complaint (Complaint ¶ 42), which the government admits exists and which it admits quotes Section 6511(d)(3)(A) in full, explicitly invokes the foreign tax credit framework under Section 901. The reference to taxes being "already deducted" in Complaint ¶ 37 describes the withholding mechanism at source under Canadian law, not a United States tax election. Plaintiff's Canadian retirement income was subject to mandatory withholding at source under the Canada Revenue Agency's rules for pension and retirement distributions. Taxes withheld at source from Canadian pension income are creditable under Section 901 and the treaty. The IRS Legal Department confirmed, as alleged at Complaint ¶ 34 and never denied in responsive pleading, that the Canadian retirement income was properly handled under applicable treaty provisions. If the Court requires additional documentation regarding the form of the foreign tax credit claimed on the 2020 return, Plaintiff requests the opportunity to supplement the record with the relevant schedules.

VII. THE THREE-YEAR LOOKBACK PERIOD DOES NOT SURVIVE THE DISPLACEMENT OF THE THREE-YEAR FILING PERIOD

Counsel argues that 26 U.S.C. § 6511(b)(2) independently bars any refund because Plaintiff made no tax payments for 2020 within the three years preceding his refund claim. (ECF No. 19 at 4-5, citing Musungayi v. United States, 86 Fed. Cl. 121, 124 (2009).) This argument fails because Section 6511(d)(3)(A) explicitly operates "in lieu of the 3-year period of limitation prescribed in subsection (a)." The three-year lookback under subsection (b)(2) is anchored to the filing period established by subsection (a). When Congress displaced that three-year period comprehensively in favor of a ten-year period for claims attributable to foreign taxes, the lookback calculation shifts accordingly. Counsel cites no authority for the proposition that the three-year lookback survives the displacement of the three-year filing period it was designed to implement. The government's own legislative history and the plain text of the statute support

Plaintiff's reading. Plaintiff was not required to file United States federal income tax returns in prior years because no amounts were owing. This factual circumstance was alleged in the Complaint and admitted by the Defendants' failure to contest it in pleading.

VIII. THE USPTO REFUND DENIAL WAS MADE WITHOUT LEGAL AUTHORITY AND THE UNDERLYING FACTS ARE ESTABLISHED IN PLEADING

Counsel's Reply addresses the patent application matter by arguing that Plaintiff's $200 payment was less than the full amount of required fees. (ECF No. 19 at 2, citing the USPTO fee schedule effective January 19, 2025.) This argument misrepresents the applicable fee schedule and the chronology of events.

Plaintiff's utility patent application was filed on January 13, 2025 and assigned Application Number 19017841, as documented at Complaint ¶ 10[3]. On February 4, 2025, Plaintiff transmitted payment of $200.00 to the USPTO via Fedwire Funds Transfer, specifically Transaction Number 1403198672, which was confirmed as received by USPTO personnel by telephone, as documented at Complaint ¶ 11. Counsel itself in the Reply references the USPTO fee schedule effective through January 18, 2025 (ECF No. 19 at 2), which is the schedule in effect on the date of Plaintiff's January 13, 2025 filing. At the time of filing, the micro-entity filing fee was $64, the micro-entity search fee was $140 in some categories, and the total initial fees varied based on applicant status. The $200 payment was at minimum sufficient to cover the

[3] The patent application filing is documented at https://legalascent.com/assets/US4.pdf, which records the filing date of January 13, 2025 under Application Number 19017841 (Complaint ¶ 10) and the Fedwire payment of $200.00 transmitted February 4, 2025 bearing Transaction Number 1403198672 (Complaint ¶ 11). The USPTO fee schedule effective through January 18, 2025, referenced by counsel in the Reply (ECF No. 19 at 2), was the schedule governing fees at the date of filing on January 13, 2025.

filing fee for the application as filed. Counsel states that “USPTO accordingly asked for additional payment” (ECF No. 19 at 2), confirming that payment was already received and that the USPTO’s own notices were seeking amounts in addition to what had been confirmed received.

Despite Plaintiff’s timely submission of all required documents and payment, the USPTO issued notices that failed to acknowledge receipt of the documents and payment that had been confirmed as received, as alleged at Complaint ¶ 12. The USPTO’s notices incorrectly demanded additional payment and documents that had already been properly submitted in accordance with USPTO statutory requirements and regulations set forth in Title 35 of the United States Code and Title 37 of the Code of Federal Regulations, as alleged at Complaint ¶ 13. On May 16, 2025 and July 8, 2025, the USPTO confirmed receipt of Plaintiff’s documents but continued to refuse to process the application or acknowledge compliance with filing requirements (Complaint ¶ 14).

Under 37 C.F.R. § 1.53(f)(1), when an applicant does not include all required fees, the USPTO is to notify the applicant and allow a period within which to pay. Counsel admits this procedure applies. The Notice of Abandonment issued October 15, 2025 declared the application abandoned for failure to respond to USPTO communications. The abandonment was not the result of any voluntary withdrawal by Plaintiff. Plaintiff resubmitted application materials multiple times, as alleged in the Complaint and never denied in responsive pleading. The abandonment was the direct result of the USPTO’s own failure to properly process confirmed submissions, which is the very basis of Plaintiff’s claim. Plaintiff submitted a refund request for the $200.00 payment, as alleged at Complaint ¶ 15. On September 10, 2025, the USPTO issued a decision letter denying Plaintiff’s refund request under Reference Number 19017841 and Refund Request ID REFND-20250902-02552 (Exhibit E to the Complaint; Complaint ¶ 16), citing 37

C.F.R. § 1.26(a) on the ground of a change of purpose after payment. On October 8, 2025, Plaintiff received an email from radhelpdesk@uspto.gov (Exhibit D to the Complaint; Complaint ¶ 17) with the denial decision attached. A refund denial under 37 C.F.R. § 1.26(a) on the ground of "change of purpose" has no application here because Plaintiff never changed his purpose and never withdrew the application. The agency abandoned it. The withdrawal provision presupposes a voluntary act by the applicant that did not occur.

Counsel's citation to Christy, Inc. v. United States, 141 Fed. Cl. 641, 669 (2019), and Miessner v. United States, 228 F.2d 643 (D.C. Cir. 1955), addresses situations where fees were correctly applied and no processing failure occurred. Those cases are not on point. Where the agency fails entirely to process a properly submitted application, retains the fee, and then denies a refund on a ground that does not apply to the facts, the result is a taking of property without due process in violation of the Fifth Amendment and an arbitrary and capricious action subject to reversal under 5 U.S.C. § 706(2)(A).

IX. IN THE ALTERNATIVE, KWONG V. UNITED STATES ESTABLISHES THAT THE FILING DEADLINE FOR THE 2020 RECOVERY REBATE CREDIT HAS NOT YET EXPIRED

Even if this Court were to decline to apply the ten-year limitation period under 26 U.S.C. § 6511(d)(3)(A), Plaintiff's refund claim remains timely on an independent basis established by the United States Court of Federal Claims in Kwong v. United States, 179 Fed. Cl. 382 (2025), decided November 2025. The reasoning of Kwong, when applied to the 2020 tax year and the standard three-year limitation period under 26 U.S.C. § 6511(a), places the effective filing deadline for Plaintiff's Recovery Rebate Credit claim at July 10, 2026. Plaintiff's return was filed on or about April 3, 2025, well within that extended period.

The statutory basis for Kwong is 26 U.S.C. § 7508A(d), as it existed when the COVID-19 federal disaster declaration was made. That provision requires the mandatory, automatic postponement of any "time-sensitive act" during the period a federally declared disaster is in effect, plus 60 days. The Federal Emergency Management Agency identified January 20, 2020 as the earliest incident date of the COVID-19 disaster and May 11, 2023 as the latest incident date. Adding the mandatory 60 days produces a postponement period running from January 20, 2020 through July 10, 2023, which the statute directs shall be "disregarded" in computing any applicable tax deadline.

In Kwong, the Court of Federal Claims applied this statutory framework to conclude that the entire COVID-19 disaster period, plus 60 days, was subject to mandatory disregard under § 7508A(d), without any regulatory cap. The court expressly rejected the government's argument, reflected in Treas. Reg. § 301.7508A-1(g)(3)(ii), that the mandatory period could never result in more than one year being disregarded. Relying on the plain text of the statute and the Supreme Court's instruction in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024) that courts are bound by unambiguous statutory text rather than agency deference, the court held that § 7508A(d) means what it says. The Tax Court reached the same conclusion as to the automatic nature of the postponement in Abdo v. Commissioner, T.C. Memo. 2024-33 (2024). Together, Kwong and Abdo establish emerging judicial agreement that the COVID-19 disaster period suspended the running of federal tax deadlines from January 20, 2020 through July 10, 2023.

The application of Kwong to Plaintiff's case is straightforward. The standard three-year limitation period under 26 U.S.C. § 6511(a) runs from the date prescribed by law for filing the 2020 federal income tax return, which was April 15, 2021. That due date falls entirely within the COVID-19 disaster period as defined by Kwong. Under § 7508A(d), that entire period is to be disregarded. The practical effect is that the 2020 return's effective due date, for purposes of computing the refund limitation period, was postponed to July 10, 2023, the day the mandatory postponement period ended. Adding three years to July 10, 2023 produces an effective refund claim deadline of July 10, 2026. Plaintiff filed his 2020 return and initiated his refund claim in April 2025, more than fourteen months before that outer limit.

The Kwong framework also addresses the Section 6511(b)(2) lookback argument raised by the government. The IRS's September 5, 2025 denial notice at Exhibit A to the Complaint (Complaint ¶ 40) disallowed the Recovery Rebate Credit on the ground that the three-year limitation period expired on June 15, 2024. That calculation ignores § 7508A(d) entirely. The IRS agent who spoke with Plaintiff on July 17, 2025, stated only that it was "over three years" and that Plaintiff would not receive the rebate (Complaint ¶ 36). Agent Mrs. Branch similarly invoked a three-year limit on October 14, 2025, without citing any statutory authority and without being able to provide a citation when asked (Complaint ¶¶ 45-46). None of the IRS's denials, at any stage, mentioned § 7508A(d) or the COVID-19 disaster extension. Imposing a tax filing deadline that falls during a declared public health emergency, without accounting for the statutory postponement mandated by Congress, is precisely the error the Court of Federal Claims corrected in Kwong.

The Kwong argument operates as an independent and alternative basis for timeliness. Plaintiff's primary position remains that the ten-year period under 26 U.S.C. § 6511(d)(3)(A) governs his claim by reason of the Canadian income taxes paid and creditable under the United States-Canada Income Tax Convention and 26 U.S.C. § 901, as established in Sections III through VII of this Surreply. Should the Court determine that the ten-year period does not apply in the first instance, the Kwong extension of the standard three-year period by operation of 26 U.S.C. § 7508A(d) provides a fully independent statutory basis for finding that Plaintiff's April 2025 refund claim was timely. Under either theory, the government's limitation defense fails and the undisputed certified account transcript balance of negative $1,238.55 constitutes an overpayment owed to Plaintiff.

X. THE SECTION 6511(B)(2) LOOKBACK PERIOD DOES NOT PRACTICALLY APPLY TO COMPLIANT AMERICANS ABROAD WHO ENTER THE FILING SYSTEM WITH ZERO PRIOR U.S. TAX PAYMENTS

The government's Section 6511(b)(2) lookback argument, already addressed in Section VII of this Surreply in the context of the statutory displacement of the three-year filing period, carries an additional and independent deficiency that the Court should recognize: the lookback provision was never designed to operate as it is being applied here, and its mechanical application to Plaintiff's circumstances produces a result that is both internally absurd and contrary to the evident purpose of the Recovery Rebate Credit.

Section 6511(b)(2) limits the amount of any refund to taxes paid within the applicable lookback window preceding the refund claim. The provision operates against a background assumption that a taxpayer has an ongoing history of U.S. tax payments from which the lookback can draw. It was drafted to prevent taxpayers from claiming refunds for payments made so long ago that the government's ordinary administrative records no longer reliably reflect them. That rationale has no application to a taxpayer who made no U.S. tax payments in prior years not because of evasion or non-compliance but because, under a proper application of applicable law, no U.S. taxes were owed. Plaintiff is a United States citizen who resided abroad and received Canadian retirement income on which Canadian taxes were paid at source. The Canadian income taxes, credited under 26 U.S.C. § 901 and the United States-Canada Income Tax Convention, eliminated Plaintiff's U.S. tax liability entirely. No U.S. tax was owed and none was paid. This was not an oversight. It was the correct legal result. The IRS Legal Department confirmed as much when it verified that the Canadian retirement income was properly handled under applicable treaty provisions, as alleged at Complaint ¶ 34 and admitted by the Defendants' failure to deny it in responsive pleading.

Applying Section 6511(b)(2) to deny the Recovery Rebate Credit to a taxpayer in these circumstances produces the perverse result that the most legally compliant Americans abroad, those who properly applied foreign tax credits and incurred zero U.S. tax liability as the law intended, are categorically disqualified from receiving pandemic relief that Congress designed to reach all eligible citizens, while Americans who overpaid their taxes or made erroneous payments during the lookback period receive full credit. The statute cannot be read to punish compliance. Congress enacted the CARES Act Recovery Rebate Credit as an economic stabilization measure for all qualifying United States citizens, without restriction based on prior tax payment history. The IRS's own eligibility criteria, confirmed at footnote 2 of this Surreply, require only citizenship, non-dependent status, and a valid Social Security number. Prior U.S. tax payment history is not among the eligibility conditions.

The situation of Americans residing abroad who enter the U.S. filing system for the first time is a recognized category of taxpayer to which the IRS has repeatedly extended accommodation. The

IRS administers Streamlined Filing Compliance Procedures specifically for U.S. taxpayers who reside outside the United States and who were unaware of their filing obligations or who had no tax due. The existence of these procedures confirms that the IRS has long recognized that Americans abroad are frequently entering the filing system without a prior domestic tax payment history, and that their absence from prior returns reflects legal compliance rather than default. Plaintiff is not an unknown quantity. He is a United States citizen who was fully entitled to the Recovery Rebate Credit, who filed a complete and accurate 2020 return that was received and assessed without error, whose account transcript reflects the credit being applied by the agency itself, and who received an IRS notice, CP21B, dated August 11, 2025, indicating a refund of $1,238.55. The lookback provision, operating on a history of zero U.S. tax payments that itself reflects full legal compliance with treaty and Code provisions, cannot be the instrument by which that credit is denied.

The government has admitted the transaction entries on the certified account transcript at ECF No. 13-2. Those entries show that the IRS applied the Recovery Rebate Credit, reversed incorrectly assessed penalties, and produced a net credit balance of $1,238.55. The government has offered no explanation for why the agency's own certified records reflect a credit owed to Plaintiff while simultaneously arguing that no refund is available. The lookback argument, if accepted in this context, would allow the IRS to record a credit on its own ledger, notify the taxpayer of the credit by official notice, and then retain the funds indefinitely by invoking a limitation rule against the very taxpayer whose compliance made domestic prior payments unnecessary. That outcome is arbitrary, it is capricious, and it violates the Fifth Amendment's prohibition on the deprivation of property without due process of law.

XI. CONSEQUENCES OF ACCEPTING THE GOVERNMENT'S POSITION

The government's position, if accepted, would establish that federal agencies may retain fees paid by members of the public when the agency fails to render the services for which those fees were paid, provided the agency characterizes the resulting abandonment as the applicant's fault. It would further establish that the IRS may deny recovery rebate credits to United States citizens who timely file tax returns with no errors identified, on the basis of a three-year limitation period that has been expressly superseded by a ten-year statutory provision and a COVID-era emergency extension, neither of which the IRS ever cited to the Plaintiff, addressed in the administrative process, or mentioned in its initial court filings. It would additionally establish that compliant Americans residing abroad, whose zero U.S. tax payment history is the direct consequence of proper application of foreign tax credits and treaty provisions, are categorically barred from pandemic relief Congress made available to all qualifying citizens. These positions have no basis in law and no place in a system in which government agencies derive their authority from statutes enacted by Congress on behalf of the citizens they serve.

CONCLUSION

The government's Reply identifies no legal basis for denying either refund claim. Counsel argues the three-year limitation against a ten-year statutory provision Congress wrote and a COVID-era extension the Court of Federal Claims confirmed in Kwong v. United States, 179 Fed. Cl. 382 (2025), disputes a certified accounting transcript the government's own attorney submitted to this Court, contradicts facts already established through admission, concedes eligibility for the Recovery Rebate Credit while denying payment, invokes a lookback provision that cannot practically apply to a fully compliant taxpayer with a zero U.S. payment history, applies a withdrawal regulation to an application the agency itself abandoned, and raises a statutory argument for the first time in a Reply after failing to raise it in Answer, in the administrative process, or in the initial Motion to Dismiss. The individually named defendants remain party to this action. Their personal involvement in the unlawful denials is documented in the Complaint with Exhibits, including the conduct of IRS Agent Mrs. Branch on October 14, 2025 (Complaint ¶¶ 43-47), USPTO personnel at the Petition Service Desk on October 15, 2025 (Complaint ¶¶ 21-26), and other individually identified agency actors.

Plaintiff's refund claim is timely and owing on three independent grounds. First, the ten-year limitation period under 26 U.S.C. § 6511(d)(3)(A) applies because the overpayment relates to and is attributable to Canadian income taxes paid and creditable under 26 U.S.C. § 901 and the United States-Canada Income Tax Convention. Second, in the alternative, the COVID-19 disaster period mandatory suspension under 26 U.S.C. § 7508A(d), as interpreted in Kwong v. United States, 179 Fed. Cl. 382 (2025), extends the effective filing deadline for the 2020 tax year to July 10, 2026, within which Plaintiff's April 2025 filing falls. Third, regardless of which limitation period applies, the Section 6511(b)(2) lookback cannot be applied to deny a Recovery Rebate Credit to a compliant American abroad whose absence of prior U.S. tax payments is itself the product of lawful application of foreign tax credits and treaty provisions, particularly where the IRS's own certified records reflect the credit applied and a refund of $1,238.55 owing. Under any of these three theories, the government's limitation defense fails and the undisputed transcript balance of negative $1,238.55 plus properly refunded penalties and interest constitutes an overpayment owed to Plaintiff.

Plaintiff respectfully requests that this Court grant summary judgment in Plaintiff's favor on all claims, direct the Internal Revenue Service to disburse the full Recovery Rebate Credit refund amount as confirmed by the certified account transcript at ECF No. 13-2, plus interest under 26

U.S.C. § 6611, direct the United States Patent and Trademark Office to refund the filing fee of $200.00 plus applicable interest, and enter such additional orders regarding damages, costs, and fees as the Court determines to be appropriate, consistent with the Proposed Order filed herewith.

Respectfully submitted,

ALLAN DOUGLAS WILSON
Plaintiff, Pro Se
1321 Upland Drive, Unit 21311
Houston, Texas 77043
Telephone: (713) 363-3006
Email: wilson.allan.d@gmail.com
Date: May 19, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated above, I caused a true and correct copy of the foregoing Surreply to be served upon counsel for the United States by way of ECF through the Clerk of Court at the address of record:

Stephen S. Ho, Trial Attorney
Civil Division, Tax Litigation Branch
U.S. Department of Justice
Email: stephen.s.ho@usdoj.gov

Allan Douglas Wilson