

Appendix

Page Number:

13. Appendix

14. Appendix

15. Judgement – US Court of Appeals – July 23, 2025

16. Judgement – US Court of Appeals – July 23, 2025

17. Judgement – US Court of Appeals – July 23, 2025

18. Judgement in a Civil Case – US District Court – October 18, 2024

19.-39. Order on Cross Motions for Summary Judgement

40. Form 1045 – Year 2015

41. Form 1045 – Year 2015 - page 2

42. Form 4549

43. Form 4549 page 2

44. LTR 662C

45. LTR 216C

46. Form 1045 – year 15 – Carryback Claim

47. Form 1045 – year 15 – Carryback Claim – page 2

48. Motion for Leave to Proceed in Forma Pauperis

49. Declaration of Indigency

54.^{JM} ~~50.~~ Certificate of Compliance

55.^{JM} ~~51.~~ Disclosure Statement

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-3331

Joe Meyer

Plaintiff - Appellant

v.

United States of America

Defendant - Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Western
(5:23-cv-04008-LTS)

JUDGMENT

Before LOKEN, GRUENDER, and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

July 23, 2025

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

United States Court of Appeals
For the Eighth Circuit

No. 24-3331

Joe Meyer

Plaintiff - Appellant

v.

United States of America

Defendant - Appellee

Appeal from United States District Court
for the Northern District of Iowa - Western

Submitted: July 18, 2025

Filed: July 23, 2025

[Unpublished]

Before LOKEN, GRUENDER, and GRASZ, Circuit Judges.

PER CURIAM.

Iowa resident Joe Meyer brought this tax refund action against the United States to recover disallowed net operating losses he carried forward to subsequent tax years and claimed as an Earned Income Tax Credit (EITC), plus damages based on what he would have earned had he timely received the claimed EITC credit.

United States Court of Appeals

For The Eighth Circuit

Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329

St. Louis, Missouri 63102

Susan E. Bindler
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

July 23, 2025

Joe Meyer
14 Terra Alta Court
Sioux City, IA 51104

RE: 24-3331 Joe Meyer v. United States

Dear Joe Meyer:

The court today issued an opinion in this case. Judgment in accordance with the opinion was also entered today.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 45 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, no grace period for mailing is allowed. Any petition for rehearing or petition for rehearing en banc which is not received within the 45 day period for filing permitted by FRAP 40 may be denied as untimely.

Susan E. Bindler
Clerk of Court

JES

Enclosure(s)

cc: Clerk, U.S. District Court, Northern Iowa
Bruce R Ellisen
Brady Wes Granger
Marie Wicks

District Court/Agency Case Number(s): 5:23-cv-04008-LTS

UNITED STATES DISTRICT COURT

for the

Northern District of Iowa

Joe W. Meyer

Plaintiff

v.

United States of America

Defendant

Civil Action No. 5:23-cv-04008-LTS-KEM

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

- the plaintiff (name) recover from the defendant (name) the amount of dollars (\$), which includes prejudgment interest at the rate of % , plus post judgment interest at the rate of % per annum, along with costs.
the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) recover costs from the plaintiff (name)
other: Judgment entered in favor of Defendant United States of America against Joe W. Meyer.

This action was (check one):

- tried by a jury with Judge presiding, and the jury has rendered a verdict.
tried by Judge without a jury and the above decision was reached.
decided by Judge Leonard T. Strand on a motion for summary judgment.

Date: October 18, 2024

PAUL DE YOUNG, CLERK OF COURT

Handwritten signature of Paul De Young

Signature of Clerk or Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

JOE W. MEYER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. C23-4008-LTS-KEM

**ORDER ON CROSS MOTIONS
FOR SUMMARY JUDGMENT**

I. INTRODUCTION

This case is before me on a pro se amended motion (Doc. 47) for summary judgment filed by plaintiff Joe Meyer and a motion (Doc. 43) for summary judgment filed by defendant United States of America. Meyer filed his initial motion (Doc. 30) on March 8, 2024, and the Government filed a resistance (Doc. 36) on May 10, 2024, including a brief (Doc. 36), a statement of material facts (Doc. 36-1) and an appendix (Doc. 36-2). Meyer filed a reply (Doc. 37) on May 15, 2024, including a brief (Doc. 37-1), a statement of material facts (Doc. 37-2) and an appendix (Doc. 37-3). Meyer subsequently filed a supplement (Doc. 40) to his motion for summary judgment, a supplement (Doc. 41) to his statement of material facts and a supplement (Doc. 42) to his brief. Meyer then filed a pro se amended motion (Doc. 47) for summary judgment on June 18, 2024, and in support he filed a brief (Doc. 47-1), a statement of material facts (Doc. 47-2), an appendix (Doc. 47-3) and a supplement (Doc. 47-4) to his amended motion.

The Government filed its motion (Doc. 43) for summary judgment on June 3, 2024, along with a brief (Doc. 43-1), a statement of material facts (Doc. 43-2) and an appendix (Doc. 43-3). Meyer filed a resistance (Doc. 44) on June 12, 2024. He then filed a pro se supplement (Doc. 48) to his resistance, along with a response to the

statement of material facts (Doc. 48-1) and an appendix (Doc. 48-2). The Government filed its reply (Doc. 51) on June 27, 2024. On July 1, 2024, Meyer then filed a supplement (Doc. 52) to his response to the statement of material facts and a reply (Doc. 53) to the Government's reply.

Additionally, Meyer filed a motion (Doc. 49) for an extension of time to file an amended pleading and the Government filed a motion (Doc. 54) to continue trial deadlines. Oral argument is not necessary. *See* Local Rule 7(c).

II. PROCEDURAL HISTORY

On February 17, 2023, Meyer commenced this action by filing a pro se complaint (Doc. 1) against the Internal Revenue Service (IRS), asserting that he has been attempting to recover credits from his business expenses “[f]rom tax years 2012 to the current.” Doc. 1 at 4. He alleged he had a net operating loss in tax year 2013, and carried it forward in tax year 2014 “as a credit in the amount of \$71,971 under EITC,” also known as Earned Income Tax Credit. *Id.* at 5. Meyer stated that “[t]he IRS then sent me a letter with an agreement to accept all expenses, pay tax on my business sales, and charge me \$1,894.80 for an accuracy related fee. I accepted the agreement.” *Id.* Meyer alleged that he applied for a carry back claim of \$68,069 under EITC and filed a 1045 form, but that he has not yet received his refund. *Id.* at 5. His initial complaint sought \$221,736.80. *Id.* at 7. He asserted that “[t]his amount includes the amounts that were never paid to me under the laws in the amounts of \$68,069 and \$109,921. The final amount also includes an additional amount of \$109,921, which is the amount that I lost from not receiving my payment in year 2016 from a standard seven year savings bond investment plus other business ventures that I missed out on among other things.” *Id.* He asserted that he is “currently still paying tax on my sales from 2013. I have been on an installment agreement with the IRS, and the tax should be paid off within two years.” *Id.* at 10. On June 21, 2023, Meyer filed an amended complaint, in which he added the

United States of America as the named defendant and removed the IRS as a defendant. Doc. 16 at 1-2.

In its answer (Doc. 20), the Government denied many of the allegations set forth in the amended complaint and asserted two defenses: (1) the court lacks subject matter jurisdiction over Meyer's claim under 26 U.S.C. § 7422 because he failed to fully pay the outstanding tax liability for 2013 prior to filing suit and (2) Meyer has failed to state a claim upon which relief can be granted. Doc. 20 at 1-2. Meyer then filed a pro se motion (Doc. 24) to amend his complaint, in which he lowered his request for damages to \$220,121.00 and attached a June 21, 2023, IRS document that indicates he no longer has a remaining balance on his 2013 taxes. He contends that "[t]his amount includes the amounts that were never paid to me under the laws in the amounts of \$68,069 and \$109,921. The final amount also includes an additional amount of \$110,200.00 which is the amount that I lost from not receiving my payment in year 2016 from a standard seven year savings bond investment plus other business ventures that I missed out on among other things." Doc. 33 at 7. I granted the motion to amend. *See* Doc. 32. On August 30, 2023, Meyer filed a pro se response (Doc. 25) to the answer. Trial is scheduled to begin November 25, 2024.

III. SUMMARY JUDGMENT STANDARDS

Any party may move for summary judgment regarding all or any part of the claims asserted in a case. Fed. R. Civ. P. 56(a). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

A material fact is one that "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Thus, "the substantive law will identify which facts are material." *Id.* Facts that are "critical"

under the substantive law are material, while facts that are “irrelevant or unnecessary” are not. *Id.* An issue of material fact is genuine if it has a real basis in the record, *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)), or when “a reasonable jury could return a verdict for the nonmoving party’ on the question.” *Woods v. DaimlerChrysler Corp.*, 409 F.3d 984, 990 (8th Cir. 2005) (quoting *Anderson*, 477 U.S. at 248). Evidence that only provides “some metaphysical doubt as to the material facts,” *Matsushita*, 475 U.S. at 586, or evidence that is “merely colorable” or “not significantly probative,” *Anderson*, 477 U.S. at 249-50, does not make an issue of material fact genuine.

As such, a genuine issue of material fact requires “sufficient evidence supporting the claimed factual dispute” so as to “require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *Anderson*, 477 U.S. at 248-49. The party moving for entry of summary judgment bears “the initial responsibility of informing the court of the basis for its motion and identifying those portions of the record which show a lack of a genuine issue.” *Hartnagel*, 953 F.2d at 395 (citing *Celotex*, 477 U.S. at 323). Once the moving party has met this burden, the nonmoving party must go beyond the pleadings and by depositions, affidavits, or otherwise, designate specific facts showing that there is a genuine issue for trial. *Mosley v. City of Northwoods*, 415 F.3d 908, 910 (8th Cir. 2005). The nonmovant must show an alleged issue of fact is genuine and material as it relates to the substantive law. If a party fails to make a sufficient showing of an essential element of a claim or defense with respect to which that party has the burden of proof, then the opposing party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 322.

In determining if a genuine issue of material fact is present, I must view the evidence in the light most favorable to the nonmoving party. *Matsushita*, 475 U.S. at 587-88. Further, I must give the nonmoving party the benefit of all reasonable inferences that can be drawn from the facts. *Id.* However, “because we view the facts in the light

most favorable to the nonmoving party, we do not weigh the evidence or attempt to determine the credibility of the witnesses.” *Kammueler v. Loomis, Fargo & Co.*, 383 F.3d 779, 784 (8th Cir. 2004). Instead, “the court’s function is to determine whether a dispute about a material fact is genuine.” *Quick v. Donaldson Co., Inc.*, 90 F.3d 1372, 1376-77 (8th Cir. 1996).

IV. RELEVANT FACTS

Meyer did not file a statement setting forth the alleged facts he relies on to seek summary judgment when he filed his initial motion for summary judgment.¹ The Government filed its own statement of material facts with its resistance, to which Meyer did not respond. Instead, Meyer filed an initial and then amended statements of material facts after the Government had filed its resistance, to which the Government did not respond.

The Government filed a statement of material facts with its motion for summary judgment, to which Meyer filed two responses that do not fully comply with Local Rule 56(b).² As a result, the parties have not set forth in a clear and concise manner the facts

¹ Local Rule 56(a)(3) requires that a party moving for summary judgment file a “statement of material facts setting forth each material fact as to which the moving party contends there is no genuine issue to be tried, filed as an electronic attachment to the motion under the same docket entry.” The rule further provides that “[e]ach individual statement of material fact must be concise, numbered separately, and supported by references to those specific pages, paragraphs, or parts of the pleadings, depositions, answers to interrogatories, admissions, exhibits, and affidavits that support the statement, with citations to the appendix.”

² Local Rule 56(b)(2) requires that a party resisting a motion for summary judgment file a “response to the statement of material facts in which the resisting party expressly admits, denies, or qualifies each of the moving party’s numbered statements of fact, filed as an electronic attachment to the brief under the same docket entry.” Local Rule 56(b) further provides that “[a] response to an individual statement of material fact that is not expressly admitted must be supported by references to those specific pages, paragraphs, or parts of the pleadings, depositions, answers to interrogatories, admissions, exhibits, and affidavits that support the resisting party’s refusal to admit the statement, with citations to the appendix containing that part of the record. The failure to respond to an individual statement of material fact, with appropriate

on which they agree and the facts on which they do not. Instead, there are a total of seven statements of material facts, and responses thereto, that are akin to ill-timed ships passing in the night.³ The facts set forth below represent my best effort to summarize the relevant facts despite the parties' inexplicable failures to comply with this court's basic rules.

Meyer submitted a personal income tax form for tax year 2013 as a single filer with no dependent children. Doc. 47-3 at 7. At that time, he was self-employed with his business Creationz Crunchy LLC as a promoter of music and he included a Schedule C setting forth business expenses totaling \$122,202. Doc. 47-3 at 9. Meyer's 2013 income taxes were examined by the IRS. Doc. 43-3 at 3, ¶ 6. The IRS issued Form 4549, Income Tax Examination Changes, setting forth adjustments to his income, a corrected taxable income, corrected tax liability and a balance due. *Id.* at 25-26. The IRS examiner and Meyer signed Form 4549 on June 10, 2015. *Id.* at 26; Doc. 43-2 at 2, ¶ 5; Doc. 48-1 at 2, ¶ 5. By signing Form 4549, Meyer consented to the assessment and collection: "I give my consent to the immediate assessment and collection of any increase in tax and penalties, and accept any decrease in tax and penalties show above, plus additional interest as provided by law." Doc. 43-3 at 26. Form 4559 lists ten adjustments to Meyer's income. Doc. 43-3 at 25. Nine of those adjustments are expenses, such as utilities, rent and travel, labeled Schedule C that were no longer

appendix citations, may constitute an admission of that fact." Meyer does not expressly admit, deny, or qualify each of the Government's numbered statements of fact in his initial responses; for example, he responded "N/a" to some statements and "I have net earnings from self-employment" to a number of statements. *See, e.g.*, Doc. 48-1 at ¶¶ 6-7, 10-14; Doc. 52 at 1-2. His second supplemental response expressly denies some statements, but he fails to include citations to the Appendix. *See* Doc. 53 at 1-4.

³ The failure of the Government to comply with the court's rules related to summary judgment motions is especially noteworthy considering its motion (Doc. 54) to continue deadlines, in which it states that this "case is likely to be resolved by the Court without the need for a bench trial." *Id.* at 2. Since the Government was so confident that this case would be resolved by the summary judgment motions, it should have attempted to follow the court's rules to facilitate an understanding of the factual record.

deducted, increasing his income by a total of \$122,202. *Id.* at 3, 25. Form 886-A explains that, for each of the nine Schedule C items, the IRS “disallowed the amount shown on your return because you did not furnish information needed to support the claimed deduction.” *Id.* at 28. The IRS included a downward adjustment of his self-employment tax of \$2,692.00, explaining that, for the tenth item, “[t]he self-employment tax deduction has been adjusted to one-half of the recomputed amount.” *Id.* at 3, 25, 28. The combined adjustment of all ten items totals \$119,510. *Id.* at 3, 25. Form 4549 provides that the total correct tax liability is \$9,847.00, that combined with \$1,894.80 in penalties and \$443.40 in interest resulted in an amount due of \$12,185.20. *Id.* at 25-26.

Jamie Powers, an Associate Area Counsel with the IRS, reviewed Meyer’s tax records and submitted an affidavit stating that Meyer’s 2013 Form 4340, which is the IRS Certificate of Assessments, Payments, and Other Specified Matters, shows that the IRS assessed his additional tax by examination to be \$9,847.00, a penalty of \$1,894.80, and interest of \$450.41. Doc. 43-3 at 1-2, ¶¶ 1, 4, 9, 10. Powers stated that “[t]he IRS’s records reflect that as a result of the examination of tax year 2013, the IRS disallowed \$122,202 in business expenses Meyer originally claimed on his income tax return for that year, as well as downwardly adjusted his self-employment tax in the amount of \$2,692.” Doc. 43-3 at 3, ¶ 7. Powers further stated that Form 4340 demonstrates that the IRS gave Meyer notice of the assessments and demand for payment and that the IRS received payments toward the outstanding balance. *Id.* at 3-4, ¶¶ 11-12. Powers further attested that “Meyer is not entitled to carry back or carry forward to other tax years the disallowed business expense deductions for tax year 2013 as a net operating loss to offset taxable income in those years.” *Id.* at 4, ¶ 14.

Meyer submitted a personal income tax form for tax year 2015 as a single filer with no dependent children. Doc. 47-3 at 12-14. His Form 1040 for tax year 2015 specifies wages of \$13,773 and business loss of \$123,694, resulting in an adjusted gross income of income of -\$109,921. *Id.* His 2015 Schedule C states that he had \$0 in income and \$123,694 in expenses, including a “Section 465(d) carryover” of \$103,307.” *Id.* at

14-15. He entered “No” on the Form 1040 line item Earned Income credit (EIC). *Id.* at 13.

Extensive correspondence transpired between Meyer and the IRS about his income taxes for tax years 2013 through 2016. On May 16, 2016, Meyer signed a 2015 Form 1045, entitled Application for Tentative Refund, for tax year 2015. Doc. 47-3 at 16-17. That form has an entry of a requested credit of \$109,921 labeled EITC. Next to that entry is a handwritten note that states “You cannot get \$109,921.00 in EITC.” *Id.* at 17. On August 1, 2016, Meyer signed an additional 2015 Form 1045 that specifies a net operating loss deduction after carryback, an adjusted gross income of -\$61,969, deductions of \$6100, and a requested EIC credit of \$68,069. Doc. 47-3 at 18-19.

A January 2016 IRS fact sheet states that the Earned Income Tax Credit (EITC or EIC) is a refundable tax credit available to individuals who “have earned income and adjusted gross income within certain limits” and “the amount of EITC varies based on income, filing status and family size.” Doc. 36-2 at 2. The fact sheet notes that for 2015 a single individual with no children must have earned \$14,820 or less to qualify and that those who qualify for EITC for 2015 can get a credit from \$2 to \$503. *Id.* at 2-3.

V. ANALYSIS

Under 28 U.S.C. § 1346(a)(1), this court has jurisdiction over “[a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.” However, “the general jurisdictional grant in § 1346(a)(1) must be read to incorporate the requirements of 26 U.S.C. §§ 7422(a) and 6511(a).” *Favors v. Internal Revenue Serv.*, No. 21-CV-359, 2021 WL 3132728, at *2 (D. Minn. June 24, 2021), *report and recommendation adopted*, No. 21-CV-0359, 2021 WL 3131421 (D. Minn. July 23, 2021).

Section 7422 provides that “[n]o suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected ... until a claim for refund or credit has been duly filed with the Secretary [of the Treasury], according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.” 26 U.S.C. § 7422(a). Under 26 U.S.C. § 7433(a), a taxpayer may bring a civil action for damages “[i]f, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title.” The Eighth Circuit has noted that “[t]hese carefully crafted legislative remedies [such as §§ 7422 and 7333] confirm that, in the politically sensitive realm of taxation, Congress’s refusal to permit unrestricted damage actions by taxpayers has not been inadvertent.” *Vennes v. An Unknown No. of Unidentified Agents of U.S.*, 26 F.3d 1448, 1454 (8th Cir. 1994).

Meyer does not clearly set forth the statutory vehicles for his claims for relief in this matter. Instead, he lists a few provisions of the Internal Revenue Code, including those that govern the allowance of carryback and carryforward of business credits, the allowance of deduction for losses when calculating taxes and the allowance of earned income tax credits. Those provisions do not govern claims against the United States for tax refunds or credits. I liberally construe Meyer’s complaint as attempting to assert damages claims under § 7422 for an invalid tax assessment and under § 7433 for unauthorized collection activities.

Meyer’s amended motion for summary judgment is a limited and confusing narrative of what he asserts transpired between him and the IRS related to his taxes and how he consequently missed out on real estate purchases and gains because the IRS did not reimburse him for his claimed losses in the form of an earned income tax credit. Doc. 30 at 2-5. He asserts that “[t]he amount demanded in this complaint is an amount of \$219,842.00 of actual, compensatory damages or losses. This amount includes the

amounts that were never paid to me under the laws in the amounts of \$68,069 and \$109,921. The final amount also includes an additional amount of \$109,921, which is the amount that I lost from not receiving my payment in year 2016, and missing out on various business ventures and opportunities.”⁴ Doc. 47 at 5. The Government, in turn, asserts that Meyer’s motion should be denied because “he has not established that he is entitled to an income tax refund of \$109,921 for tax year 2015 and damages of \$110,200 in hypothetical lost investment opportunities.” Doc. 36 at 1.

Throughout his filings, Meyer fails to comply with Local Rule 56.⁵ As will be discussed below, Meyer fails to demonstrate that he is entitled to the damages that he seeks. *See* Fed. R. Civ. P. 56(e) (“If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may ... consider the fact undisputed for purposes of the motion, ... grant summary judgment if the motion and supporting materials—including facts considered undisputed—show that the movant is entitled to relief ... or ... issue any other appropriate

⁴ Meyer references \$68,069 but does not otherwise explain the origin of this amount or how it relates to his claims. The total amount he requests is not the sum of \$68,069, \$109,921 and \$109,921 (in lost opportunities), as he states. Rather, the total he requests is the sum of the \$109,921 refund request and his lost opportunities request, which alternates between \$109,921 and \$110,200. Compare Doc. 47 at 7 (“I will be demanding the additional amount of \$109,921. This amount will include lost business opportunities that I accrued as a result of the IRS’s, being sued as the United States of America, reckless or intentional or neglectful actions that caused direct economic damages by not issuing my refund in a timely manner.”); Doc. 48 at 7 (“I am within all governing laws required to receive the refund amount of \$109,921 for tax year 2015, and also the amount of \$110,200 for lost real estate investment opportunities from the IRS not issuing my refund and by acting reckless or intentionally neglectful, causing direct economic damages.”). Consequently, Meyer’s total damages request varies between \$219,842 (Doc. 47-4 at 1), which is the sum of \$109,921 and \$109,921, and \$220,121 (Doc. 33 at 7), which is the sum of \$109,921 and \$110,200.

⁵ Meyer does not cite to a summary judgment appendix. At times he references certain forms and correspondence with the IRS. He also directs the court to his attachments to his complaint: “please see documents included in the Northern District of Iowa, Western Divisions online filing systems described as Communications, including 257 pages, filing on 2/17/2023.” Doc. 47 at 3. I have reviewed the full record submitted by the parties in order to rule on their cross-motions.

order”). Thus, for the reasons explained below, the Government is entitled to judgment as a matter of law.

A. Refund Claim

Meyer’s complaint challenges the validity of the IRS’ assessment of his taxes. He asserts on summary judgment that he is “entitled to a refund of \$109,921 in EITC [Earned Income Tax Credit] for tax year 2015.” Doc. 48 at 1; *see also* Doc. 47 at 2. Meyer argues that in tax year 2013 he had business losses totaling \$119,510, which he carried forward and claimed as an EITC. Doc. 47 at 2. He contends that the IRS informed him that he would need to file a Form 1045 and that he did so to request a refund. *Id.* at 3. Meyer states that “[t]he net operating loss deduction of \$109,921 was claimed as Earned Income Tax Credit, on Form 1045, year 2015, signed on 5/16/2016. This form was filed with the IRS, yet no refund was issued.” Doc. 47 at 4. Meyer argues that because he sent the requested forms to the IRS that he is entitled to summary judgment: “The United States of America admits that these documents were sent in and received, and that no payment was received by me, the plaintiff, in the form of a refund.” *Id.* at 4; *see also* Doc. 41 at 2. In response, the Government asserts that he cannot carry forward business expenses that were never allowed, that he has not demonstrated he qualifies for an EITC and that the amount Meyer claims in EITC is “well beyond the permissible limit of an EITC.” Doc. 36 at 3.

The Government argues, first, that the IRS never allowed the business expenses that Meyer claims, and because his refund demand relies on disallowed 2013 expenses he is not entitled to the refund.⁶ Doc. 43-1 at 2, 3. Meyer contends that “[t]he IRS has

⁶ The Government also argues that, to the extent Meyer’s refund claim is based on tax year 2013, such a claim would be barred by 26 U.S.C. 7422’s condition on the right to sue upon the taxpayer making a full payment of the outstanding tax liability for the year at issue. Doc. 43-1 at 4 n.3. “Section 7422 allows for a refund action to be brought in district court if the taxpayer first filed an administrative claim for a refund and also fully paid the amount of the tax at issue. 26 U.S.C.

allowed all of my business expenses, validated by form 4549.” Doc. 48-1 at 2, ¶ 3. Meyer asserts that “Form 4549 agreement proves that I have allowed business expenses originating in tax year 2013,” and that “[t]he proposal of signing form 4549 allows all business expenses listed as allowed deductions.”⁷ Doc. 44 at 1, 2. Meyer repeatedly points to Form 4549 as evidence of his assertion, but the document itself does not demonstrate what Meyer asserts. Rather, it only demonstrates that the business expenses were disallowed for 2013, resulting in an adjusted income and higher tax assessment. The form states absolutely nothing about carrying those expenses forward.

Meyer’s 1040 for tax year 2015 does not provide any clarity, claiming \$123,694 in expenses with \$103,307 in “Section 465(d) carryover” that leads to an adjusted gross income of -\$109,921. Doc. 47-3 at 12-14. Meyer attaches a 2015 Form 1045 that includes a modification to include \$109,921 net operating loss deduction after carryback. Doc. 47-3 at 16. Meyer argues that the IRS’s act of including his net operating loss of \$109,921 for 2nd preceding tax year 2013 after carryback proves that he had allowed business deductions. Doc. 44 at 3. The other document relied on by Meyer is a June 30, 2017, letter from the IRS that addresses tax years 2013 through 2016 and states that based on the 2014 Form 1040X that was received there is a 2014 net operating loss of -\$87,568 that must be carried back to 2012 and then -\$84,245 is carried over to 2013 and further that “[t]here is a loss carryover of -\$43,947.00 to 2015, -\$35,502.00 to 2014, and -\$31,311.00 to 2017. . . We made changes to your 2014, 2015, and 2016 tax returns . . . to correct the loss carryovers.” Doc. 48-2 at 21. The correspondence requests

§ 7422.” *Merfeld v. Holmes*, No. C03-2022, 2003 WL 23169796, at *2 (N.D. Iowa Oct. 29, 2003). Meyer fails to raise a genuine issue of material fact that he had in fact fully paid his 2013 taxes prior to filing suit, but in any event he does not appear to base his refund request on his 2013 taxes and exclusively bases his claim on a refund request for his 2015 income taxes.

⁷ “A Form 4549 is an income tax examination changes report prepared entirely by the IRS. After the report is prepared, the taxpayer signs his consent to the assessment and collection of the liabilities indicated therein.” *In re May*, 247 B.R. 786, 792 n.6 (Bankr. W.D. Mo.), *aff’d*, 2 F. App’x 681 (8th Cir. 2001).

further documentation to support his claims. There is a lack of clarity about what losses the IRS is referencing, and how or whether \$122,202 in business expenses from 2013 connect to the \$109,921 in claimed losses for 2015. Meyer fails to demonstrate that the IRS indeed allowed his 2013 expenses as net operating losses and he does not explain what led to \$109,921 in losses for 2015. But, significantly, it is unnecessary to determine whether Meyer is allowed \$109,921 in net operating losses in 2015 to rule on his refund claim, because even if the losses were allowed he is not entitled to a refund of those losses based on EITC.

The EITC, codified in the Internal Revenue Code at 26 U.S.C. § 32, was enacted “to provide relief to low income families who pay little or no income tax, and it was intended to provide an incentive to work rather than receive federal assistance.” *In re Tomczyk*, 295 B.R. 894, 896 (Bankr. D. Minn. 2003) (citation omitted). “The [EITC] permits qualifying taxpayers to claim a percentage of their income as a credit against tax they would otherwise owe for a taxable year.” *In re Demars*, 279 B.R. 548, 549 (Bankr. W.D. Mo. 2002). See 26 U.S.C. § 32(a)(1) (“In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer’s earned income for the taxable year as does not exceed the earned income amount.”). “If the [EITC] is greater than the taxes owed by the wage earner, the excess is considered an overpayment of taxes, and the taxpayer is entitled to a refund as if she overpaid her taxes in that amount. In other words, a predicate to receiving an EIC is to have earned income.” *In re Demars*, 279 B.R. at 550-51.

Section 32(b) prescribes different percentages and amounts used to calculate the credit. The amount of EITC that an individual receives as credit against their income tax liability depends on factors such as their income, filing status and number of dependents. See *Rowe v. Commissioner*, 128 T.C. 13, 15, 2007 WL 549500, at *15 (U.S. Tax Ct. 2007). (“Different percentages and amounts are used to calculate the credit depending on whether the eligible individual has no qualifying children, one qualifying child, or two

or more qualifying children.”). Section 32(a)(2) provides limitations on the amount of the allowable credit based on certain percentages and amounts. As one court explained:

The EITC is structured such that a graph depicting the amount of the credit an individual can receive in relation to the individual’s earned income is the shape of a plateau. The credit increases as earned income increases up to a point at which the credit is at its maximum, where it remains level for the next several thousand dollars of income. The credit then begins to decrease as income increases further until the credit is zero dollars for all earnings above a certain amount. The so-called “sweet spot” of the EITC is the flat portion at the top of the plateau, within which individuals in a certain income range receive the maximum possible EITC, given the number of qualifying children they can claim.

Castellar v. United States, No. 10 CIV. 3078, 2011 WL 3055352, at *1 (S.D.N.Y. July 19, 2011). In other words, “[t]he amount of the credit is a specified percentage of the taxpayer’s earned income, up to a certain amount.

The applicable percentage and amounts vary according to IRS tables, which account for variables such as inflation and the number of the taxpayer’s qualifying children.” *Peterson v. H & R Block Tax Servs., Inc.*, 971 F. Supp. 1204, 1207 n.4 (N.D. Ill. 1997). 26 U.S.C. 32(f) specifies that “[t]he amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.” The 2015 EITC Table, prepared pursuant to 26 U.S.C. § 32(f), demonstrates that the range of permissible credits spanned \$2 to \$6242, and specifically, for a single taxpayer with no children spanned \$2 to \$503. Doc. 43-3 at 35-36; *see* Rev. Proc. 2014-61, sec. 3.06(1), 2014-47 I.R.B. 860, 863 (specifying that the maximum amount of credit for an individual with no qualifying children in 2015 was \$503).

The statute provides that EITC is subject to a phaseout set forth in 26 U.S.C. § 32(a)(2). “For a worker with nonzero income, the amount of the EITC the worker qualifies for increases gradually with income until the maximum credit is reached, and then gradually decreases until the taxpayer’s income surpasses a certain point beyond which a taxpayer is not eligible to claim the EITC.” *United States v. Powell*, No. 21-

CV-10622, 2024 WL 1342678, at *2 (E.D. Mich. Mar. 29, 2024). *See, e.g., Skitzki v. Comm'r of Internal Revenue*, 118 T.C.M. 182, 2019 WL 3946102, at *6 (U.S. Tax Ct. 2019) (“A taxpayer without any qualifying children may be eligible for the earned income tax credit for 2014, but only if his adjusted gross income did not exceed \$14,590 if not filing jointly. . . . Petitioner’s adjusted gross income for 2014 exceeded that amount. Thus, he is not entitled to the earned income tax credit for 2014.”); *Neff v. United States*, 43 Fed. Cl. 659, 660 (1999) (“According to the 1996 Earned Income Credit Table, prepared pursuant to 26 U.S.C. § 32(f) (1994) and appearing in the 1996 Form 1040 Instructions booklet, individuals with two children and earned income equal to or greater than \$28,495 are entitled to no EIC for the 1996 tax year.”). For tax year 2015, the revenue procedure provides that a taxpayer without qualifying children could be eligible for EITC only if his adjusted gross income (or, if greater, earned income) is greater than \$0 but did not exceed \$14,820. *See* Rev. Proc. 2014-61, sec. 3.06(1), 2014-47 I.R.B. 860, 863 (specifying the complete phaseout amount of income for tax year 2015); *see also Bidzimou v. Comm'r of Internal Revenue*, 119 T.C.M. 1577, 2020 WL3182700, at *19-20 (U.S. Tax Ct. 2020) (“A taxpayer without any qualifying children may be eligible for the earned income tax credit for 2015 and 2016, but only if his adjusted gross income did not exceed \$14,820 for 2015 and \$14,880 for 2016 if he was not filing a joint return. . . . Petitioner’s adjusted gross income for both 2015 and 2016 exceeded those amounts. Therefore, he is not entitled to the earned income tax credit for 2015 or 2016.”). The 2015 Earned Income Credit Table only provide credit amount for income greater than \$1 up through \$14,400. Doc. 43-3 at 35-36.

Meyer claims he is entitled to a refund of \$109,921 in EITC for tax year 2015, but there are a number of problems with his assertion. First, he does not demonstrate that he is entitled to EITC at all because he does not demonstrate that he meets the income requirements for EITC. For example, he would need to demonstrate that he had an earned income in 2015 of greater than \$0 but no more than \$14,400. Yet he asserts that his net earned income amount was -\$109,921. *See, e.g.,* Doc. 37 at 2 (“In this case the

earned income from self-employment is -\$109,921.”). And his 2015 Form 1040 specifies a gross income of -\$109,921. The earned income amount he asserts would disqualify him from an EITC.⁸ An individual must demonstrate an income greater than \$0 to qualify for an EITC. *See* Doc. 43-3 at 35-36 (beginning entries in the 2015 EITC table with an income of at least \$1).

Even if Meyer did qualify for an EITC, as a matter of law he is not entitled to the \$109,921 that he claims.⁹ Meyer argues that 26 U.S.C. § 32(a) “means that an eligible individual may claim a credit equal to the earned income amount, but nothing more. In this case the earned income from self-employment is -\$109,921, meaning I may claim a credit not exceeding this amount, \$109,921.” Doc. 37 at 2. Meyer argues that the Government “fails to recognize the three different scenarios for EITC,” which he appears to contend are “earned income from self-employment,” “low income earned income eligibility and individuals with earned income with a qualifying child.” Doc. 37 at 2; Doc. 44 at 4. He asserts that “[t]he scenario that applies to me, the plaintiff, and this case is 26 USC § 32(c)(2) Earned Income (A)(ii) the amount of tax payers net earning for self-employment, and 26 USC § 32(a) which says eligible individual may claim a credit equal to the earned income amount, but nothing more. In this case, I may claim a credit of \$109,921 for my net earned income amount of -\$109,921, but nothing more.” Doc 44 at 4.

⁸ The Government argues that “Meyer has failed to produce evidence to show that he qualified as an individual eligible to claim the EITC for tax year 2015.” Doc. 36 at 4. The Government notes that Meyer claimed earned income of \$13,773 for tax year 2015 on his 1040, which would limit him to a maximum EITC of \$80, but if he was permitted to carry forward to tax year 2015 the business expenses from tax year 2013 as he claims then his earned income would be \$0, “which would disqualify him from eligibility for any amount of EITC.” Doc. 43-1 at 7; Doc. 36 at 4 (citing Doc. 36-2 at 9).

⁹ Meyer asserts in his statement of material facts that “I am due a refund in the amount of \$109,921.00 from my filed Form 1045’s tax year 2015, signed 5/16/16, and 8/1/16.” Doc. 47-2 at 2. Meyer does not explain why his May 16, 2016, Form 1045 requests \$109,921 in EITC but his August 1, 2016, Form 1045 requests \$68,069 in EITC.

Meyer simply misreads the statute. He offers no support for his misguided interpretation of § 32.¹⁰ The statute does not set forth three different scenarios, one of which is a full credit equal to the amount of one's earned negative income due to self-employment. To the contrary, under the plain reading of the statute, there is simply one scenario: the allowance of an earned income tax credit for workers with an income within a particular range that depends on their filing status and number of children. The provision on which Meyer relies is not a separate scenario for qualifying for an EITC, it is a definition of the term "earned income" as it is used in the statute. Meyer also misstates 26 U.S.C. § 32(a), which provides that an eligible individual shall be allowed a credit calculated as a *percentage* of the individual's earned income, subject to certain limitations. Nowhere does the statute provide for a credit of a taxpayer's full earned income. Rather, Meyer, as a single individual with no qualified children, would be limited to a \$503 credit even if he *had* demonstrated that he was eligible for an EITC.

In sum, Meyer does not raise a genuine issue of fact that he is eligible for an EITC for tax year 2015, and as a matter of law, Meyer cannot demonstrate that he is entitled to \$109,921 in EITC. The Government's motion for summary judgment on the refund claim is granted.

B. *Claim for Losses Related to Lost Opportunities*

Meyer also asserts that he entitled to damages for lost business and investment opportunities damages based on the IRS' failure to timely issue his refund based on EITC. He asserts that he was interested in buying real estate upon receipt of his refund payment. Doc. 47 at 5. He argues that he lost out on \$60,000 he could have charged in rent, and

¹⁰ Meyer repeatedly cites 26 U.S.C. § 32(c)(2)(a)(ii) in his response to the Government's statement of material facts, stating that their contentions about EITC eligibility "do not apply to my situation of net earning from self-employment." Doc. 52 at 5-6, ¶¶ 10-15. Yet that provision simply includes net earnings from self-employment within the definition of "earned income" as it is used in the statute. It does not create a different scenario or path for qualifying for EITC for those who are self-employed.

because the value of the three properties he was interested in increased, he could have net an additional \$40,200 from selling the properties. *Id.* He also argues he could have gained an additional \$10,000 by investing \$10,000 in a standard seven-year savings bond. *Id.* Meyer's unsupported alleged "lost opportunities" total \$110,200. The Government argues that "Meyer has not identified a cause of action or a waiver of sovereign immunity that permits him to sue the United States for alleged losses related to the denial of his tax refund." Doc. 43-1 at 7.

Meyer's lost opportunities claim cannot survive when he has not demonstrated that he was entitled to a refund in the first place. Moreover, Meyer does not provide any statutory basis to support the award of damages for lost business and investment opportunities damages based on an IRS failure to timely issue a refund. Meyer relies on three statutory provisions that do not provide such a basis. First, he cites 26 U.S.C. § 165, which allows for deductions for "any loss sustained during the taxable year and not compensated from by insurance or otherwise" including, for example, business losses, wagering losses, theft losses and capital losses. *See* Doc. 37 at 2; Doc. 47 at 7. That provision simply allows taxpayers to deduct losses when computing their taxable income and filing their taxes. In no way does it provide for a cause of action against the United States for reimbursement for any purported lost opportunity, such as an opportunity to purchase real estate or invest in a bond. That statute provides no support whatsoever for Meyer's claim against the United States for such damages. Meyer also relies on 26 U.S.C. § 6402, which simply provides the authority for the Secretary of the Treasury to make credits or refund in the case of overpayment of taxes. *See* Doc. 41 at 2; Doc. 47 at 7. Again, that provision does not allow for a cause of action against the United States. In sum, these two statutes do not provide a cause of action or a sovereign immunity waiver permitting a claim against the United States.

Finally, Meyer relies on 26 U.S.C. § 7433. *See* Doc. 47 at 7; *see also* Doc. 52 at 6, ¶ 17. Congress has waived sovereign immunity to provide a remedy for wrongful collection of taxes against the United States by a taxpayer under § 7433. *Broos v.*

Brellenthin, No. CIV. 14-2032, 2014 WL 4954702, at *2 (D. Minn. Sept. 30, 2014). With respect to that provision, the Government responds that Meyer “fails in any operative pleading to set out specific conduct which would entitle him to damages under this statute.” Doc. 51 at 2. I agree. Meyer has failed to demonstrate that the IRS engaged in conduct that is actionable under 26 U.S.C. § 7433. “Section 7433 creates a private right of action only for tax collection activity that violates some provision of the Revenue Code or the regulations promulgated thereunder.” *Shwarz v. United States*, 234 F.3d 428, 433 (9th Cir. 2000). The statute is limited to conduct in connection with the collection of tax, not the assessment of tax. See *Yusuf v. United States*, No. CIV. 15-1910, 2015 WL 5333838, at *3-6 (D. Minn. Aug. 13, 2015), report and recommendation adopted, No. CIV. 15-1910, 2015 WL 6159828 (D. Minn. Sept. 14, 2015) (the imposition of an allegedly erroneous assessment is not cognizable under § 7433); *Shaw v. United States*, 20 F.3d 182, 184 (5th Cir.1994) (explaining that § 7433, by its plain language, only authorizes suit against the government for “improper collection practices” on the part of “an agent trying to collect the taxes owed,” not for improper tax determinations or assessments); see also *Miller v. United States*, 66 F.3d 220, 222-23 (9th Cir.1995) (holding that § 7433 cannot be used to challenge the validity of a tax determination). “Although in its early form the statute granted taxpayers the right to sue ‘for damages in connection with the determination or collection of any Federal tax,’ . . . Congress later deleted that portion of the statute that referred to determination of taxes.” *Shaw*, 20 F.3d at 184 (emphasis in original). “[T]o prove a claim for improper collection practices, the taxpayer must demonstrate that the IRS did not follow the prescribed methods of acquiring assets. *Id.* Here, Meyer does not include any factual allegations demonstrating a plausible claim that any IRS agent intentionally, recklessly, or negligently disregarded any provision or regulation in its methods of collecting the

assessed tax. Because Meyer has failed to demonstrate that the IRS engaged in the type of conduct actionable under § 7433, a claim under that provision cannot survive.¹¹

Meyer has failed to demonstrate any legal basis for an award of damages based on his alleged lost opportunities. The Government's motion for summary judgment is granted as to his baseless opportunity damages claim.

VI. CONCLUSION

For the reasons set forth herein:

1. Meyer's pro se motion (Doc. 30) and amended motion (Doc. 47) for summary judgment are **denied**.
2. The Government's motion (Doc. 43) for summary judgment is **granted**.
3. Judgment **shall enter** in favor of the Government and against Meyer.
4. Meyer's motion (Doc. 49) for an extension of time to file an amended pleading, and the Government's motion (Doc. 54) to continue trial deadlines, are both **denied** as moot.
5. The trial of this case, currently scheduled to begin November 25, 2024, is **cancelled**.
6. Because this order disposes of all claims, the Clerk of Court shall **close this case**.

¹¹ Section 7433 states that "[a] judgment for damages shall not be awarded under [this section] unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service." 26 U.S.C. § 7433(d)(1). Title 26 C.F.R. 301.7433-1(e) sets forth the specific administrative procedures a taxpayer must follow to take advantage of a § 7433 claim. Neither party addresses whether Meyer exhausted those procedures.

IT IS SO ORDERED this 18th day of October, 2024.



Leonard T. Strand
United States District Judge

"Carryback Claim"

Form **1045** Application for Tentative Refund OMB No. 1545-0048
2015

Department of the Treasury
Internal Revenue Service

▶ Separate instructions and additional information are available at www.irs.gov/form1045.
▶ Do not attach to your income tax return. Mail in a separate envelope.
▶ For use by individuals, estates, or trusts.

Name(s) shown on return: **JOE W MEYER**

SSN: **1022**

Address: [Blank]

City, town or post office, state, and ZIP code: [Blank]

Foreign country name: [Blank]

Foreign province/county: [Blank]

Foreign postal code: [Blank]

This application is filed to carry back: **108,367**

For the calendar year 2016, or other tax year beginning 2016, and ending 2016

3. If this application is for an unused credit created by an earlier carryback, enter your original carryback ▶
4. If you filed a joint return (or separate return) for some, but not all, of the tax years involved in figuring the carryback, list the years and specify whether joint (J) or separate (S) return for each ▶
5. If SSN for carryback year is different from above, enter SSN ▶ and b Year(s) ▶
6. If you changed your accounting period, give date permission to change was granted ▶ Yes No
7. Have you filed a petition in Tax Court for the year(s) to which the carryback is to be applied? Yes No
8. Is any part of the decrease in tax due to a loss or credit resulting from a reportable transaction required to be disclosed on Form 8800, Reportable Transaction Disclosure Statement? Yes No
9. If you are carrying back an NOL or net section 1256 contract loss, did this cause the release of foreign tax credits or the release of other credits due to the release of the foreign tax credit (see instructions)? Yes No

Computation of Decrease in Tax (see instructions)	2ND preceding tax year ended ▶ 12-31-13		preceding tax year ended ▶		preceding tax year ended ▶	
	Before carryback	After carryback	Before carryback	After carryback	Before carryback	After carryback
10 NOL deduction after carryback (see instructions)		109,921				
11 Adjusted gross income	46,998	-61,969				
12 Deductions (see instructions)	6,100	6,100				
13 Subtract line 12 from line 11	40,298	-60,069				
14 Exemptions (see instructions)	3,900	3,900				
15 Taxable income, line 13 minus line 14	36,398	-63,969				
16 Income tax. See instructions and attach an explanation.						
17 Excess advance premium tax credit repayment (see instructions)						
18 Alternative minimum tax						
19 Add lines 16 through 18						

Computation of Decrease in Tax (Continued)	2ND preceding tax year ended 12-31-13		_____ preceding tax year ended		_____ preceding tax year ended	
	Before carryback	After carryback	Before carryback	After carryback	Before carryback	After carryback
	20 General business credit (see instructions)					
21 Net premium tax credit (see instructions)						
22 Other credits. Identify EIC		68,069				
23 Total credits. Add lines 20 through 22		68,069				
24 Subtract line 23 from line 19		-68,069				
25 Self-employment tax (see instructions)	5,384	5,384				
26 Additional medicare tax (see instructions)						
27 Net investment income tax (see instructions)						
28 Health care: individual responsibility (see instructions)						
29 Other taxes	4,463	4,463				
30 Total tax. Add lines 24 through 28	9,847	-0-				
31 Enter the amount from the "After carryback" column on line 30 for each year	4,463 ⁰⁻					
32 Decrease in tax. Line 30 minus line 31	9,847					
33 Overpayment of tax due to a claim of right adjustment under section 1341(b)(1) (attach computation)						

Under penalties of perjury, I declare that I have examined this application and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Sign Here
 Keep a copy of this application for your records.

Your signature: *J. W. Meyer* Date: 8/1/16

Spouse's signature, if Form 1045 is filed jointly, must also sign.

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input checked="" type="checkbox"/> if self-employed	PTIN
	Firm's name	Firm's EIN			
	Firm's address	Phone no.			

1. Adjustments to Income	Person with whom examination changes were discussed.	Name and Title:	
	Period End 12/31/2013	Period End	Period End
a. Sch C1 - Utilities	3,240.00		
b. Sch C1 - Rent/Lease - Other Business Property	3,600.00		
c. Sch C1 - Meals, and Entertainment	3,662.00		
d. Sch C1 - Commissions and Fees	0,100.00		
e. Sch C1 - Office Expenses	9,000.00		
f. Sch C1 - Other Expenses	12,800.00		
g. Sch C1 - Advertising	13,600.00		
h. Sch C1 - Travel	7,950.00		
i. Sch C1 - Legal and Professional Services	60,250.00		
j. SE AGI Adjustment	(2,692.00)		
k.			
l.			
m.			
n.			
o.			
p.			
2. Total Adjustments	119,510.00		
3. Taxable Income Per Return or as Previously Adjusted	(83,112.00)		
4. Corrected Taxable Income	36,398.00		
Tax Method	TAX TABLE		
Filing Status	Single		
5. Tax	5,023.00		
6. Additional Taxes / Alternative Minimum Tax			
7. Corrected Tax Liability	5,023.00		
8. Less a. Education Credit			
Credits b.			
c.			
d.			
9. Balance (Line 7 less Lines 8a through 8d)	4,463.00		
10. Plus a. Self Employment Tax	5,304.00		
Other b.			
Taxes c.			
d.			
11. Total Corrected Tax Liability (Line 9 plus Lines 10a through 10d)	9,047.00		
12. Total Tax Shown on Return or as Previously Adjusted	0.00		
13. Adjustments to: a.			
b.			
c.			
14. Deficiency-Increase in Tax or (Overassessment-Decrease in Tax) (Line 11 less Line 12 adjusted by Lines 13a through 13c)	9,047.00		
15. Adjustments to Prepayment Credits - Increase (Decrease)			
16. Balance Due or (Overpayment) - (Line 14 adjusted by Line 15) (Excluding interest and penalties)	9,047.00		

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.

You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income you earned and do not pay the required tax. The IRS may order backup withholding (withholding of a percentage of your dividend and/or interest income) if the tax remains unpaid after it has been assessed and you have responded to the IRS within a 120-day period.

Case 5:23-cv-04008-LTS-KEM Document 37-3 Filed 03/08/24 Page 40 of 50
 Catalog Number 23103A

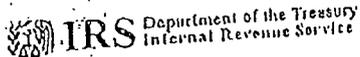
Form 4549 (Rev. May 2008)	Department of the Treasury-Internal Revenue Service Income Tax Examination Changes		Page <u>2</u> of <u>2</u>
Name of Taxpayer JOE R HEYER	Taxpayer Identification Number -7822		Return Form No.: 1040
17. Penalties/ Code Sections	Period End 12/31/2013	Period End	Period End
a. Accuracy-IRC 6662	1,894.00		
b.			
c.			
d.			
e.			
f.			
g.			
h.			
i.			
j.			
k.			
l.			
m.			
n.			
18. Total Penalties	1,894.80		
Underpayment attributable to negligence: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.			
Underpayment attributable to fraud: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.			
Underpayment attributable to Tax Motivated Transactions (TMT). The interest will accrue and be assessed at 120% of the underpayment rate in accordance with IRC §6621(c)	0.00		
19. Summary of Taxes, Penalties and Interest:			
a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)	9,847.00		
b. Penalties (Line 10) - computed to 06/10/2015	1,894.80		
c. Interest (IRC § 6601) - computed to 07/10/2015	443.40		
d. TMT Interest - computed to 07/10/2015 (on TMT underpayment)	0.00		
e. Amount due or (refund) - (sum of Lines a, b, c and d)	12,185.20		

Other information:

Examiner's Signature: Craig Askildson	Employer ID: 100868220	Office: Omaha	Date: 06/10/2015
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Consent to Assessment and Collection. I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States Tax Court the findings in this report. Therefore, I give my consent to the immediate assessment and collection of any increase in tax and penalties, and accept any decrease in tax and penalties shown above, plus additional interest as provided by law. It is understood that this report is subject to acceptance by the Area Director, Area Manager, Specialty Tax Program Chief, or Director of Field Operations.

Signature of Taxpayer	Date: 6/10/15	Signature of Taxpayer	Date:
By:		Title:	Date:



KANSAS CITY MO 64999-0025

In reply refer to: 0932304114
Oct. 11, 2016 LTR 662C 1
7822 201312 30
00006453
BODC: SB

JOE W MEYER

Taxpayer Identification Number: 7822
Tax Period(s): Dec. 31, 2013 Dec. 31, 2015

Form: 1040

Dear Taxpayer:

We processed your request for adjustment, dated Aug. 01, 2016. We changed your proposed decrease in tax. You should correct your records to reflect the changes we made.

Review Schedule A of Form 1045 that we have revised for you. The Net Operating Loss does not change your Schedule C. You are not allowed to adjust your Self Employment Tax based on a Net Operating Loss (NOL) carryback. The loss reduces your adjusted gross income only for carryback computation purposes.

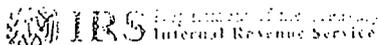
The current balance due for the tax period Dec. 31, 2013 is \$8,017.58, which includes penalty and interest figured to Oct. 29, 2016. Penalties and interest will continue to increase until you pay the balance due in full.

We've provided a general explanation of the possible penalties and interest we may have included in your account balance. If you want a detailed explanation of how we calculated the balance on your account, contact us at the toll-free number in this letter and we'll send you one.

** Filing and Paying Late -- IRC Section 6651 **

We charge a 5% penalty for filing late, and a 1/2% penalty for paying late, when a return is filed late and the tax is not paid by the date it was due. When both penalties apply for the same month, the penalty for filing late is reduced by the amount of the penalty for paying late for that month.

The penalty for filing late is based on the tax ultimately due, which was based on the original return due date without regard to extensions.
Case 5:23-cv-04008-LTS-KEM Document 1-1 Filed 02/17/23 Page 152 of 257
Case 5:23-cv-04008-LTS-KEM Document 30 Filed 03/08/24 Page 79 of 90
Case 5:23-cv-04008-LTS-KEM Document 37-9 Filed 05/15/24 Page 4 of 50



KANSAS CITY NO 64999-0025

In reply refer to: 0932304114
May 12, 2016 LTR 216C 1
201312 30
00015612
BODC: SB

JOE W MEYER

AMES JA 50014-3850

Taxpayer identification number: 7822
Tax periods: Dec. 31, 2013 Dec. 31, 2015

Form: 1040

Dear Taxpayer:

We received your request on Mar. 28, 2016, for a tentative refund from a carryback adjustment for the loss or credit year ending Dec. 31, 2013. We need more information to process your request.

We are enclosing the transcript of your 2013 tax account. Please prepare a new Form 1045 using our figures in the "Before carryback" column.

The balance due for your Form 1040 account for the tax period ending Dec. 31, 2013, is \$12,876.52, which includes penalty and interest charges figured to June 02, 2016. We will continue to charge penalties (up to the maximum allowed by law) and interest until you pay the balance in full.

We've provided a general explanation of the possible penalties and/or interest included in the current balance due on your account. If you would like a specific explanation of how the amounts were computed on your account, please contact us at the toll-free number shown in this letter and we will send you a detailed computation.

**** Filing and/or Paying Late -- IRC Section 6651 ****

We charge a monthly 5% penalty for filing a return late and a monthly 1/2% penalty for not paying the tax by the due date. When both penalties apply for the same month, the penalty for filing late is reduced by the amount of the penalty for paying late for that month.

The penalty for filing late is based on the tax ultimately due that was not paid by the original return due date without regard to extensions.

The penalty for paying late is based on the net unpaid tax at the beginning of each penalty month following the payment due date for that tax.

Case 5:23-cv-04008-LTS-KEM Document 30 Filed 03/08/24 Page 24 of 90
Case 5:23-cv-04008-LTS-KEM Document 37-3 Filed 05/15/24 Page 32 of 50

"Carryback claim."

CIS1637SXB

Form **1045**

Application for Tentative Refund

OMB No. 1545-0088

2015

Department of the Treasury
Internal Revenue Service

▶ Separate instructions and additional information are available at www.irs.gov/form1045.
▶ Do not attach to your income tax return. Mail in a separate envelope.
▶ For use by individuals, estates, or trusts.

Name(s) shown on return Joe W. Meyer		Social security or employer identification number 1822	
Number, street, and apt. or suite no. If a P.O. box, see instructions.		Spouse's social security number (SSN)	
City, town or post office, state, and ZIP code. If a foreign address, also complete spaces below (see instructions).		Daytime phone number	
Foreign country name		Foreign province/county	Foreign postal code
1 This application is filed to carry back:	a Net operating loss (NOL) (Sch. A, line 25) \$ 109,921.00	b Unused general business credit \$	c Net section 1256 contracts loss \$
2a For the calendar year 2015, or other tax year beginning , 2015, and ending , 20			b Date tax return was filed 02.08.2016

- 3 If this application is for an unused credit created by another carryback, enter year of first carryback ▶
- 4 If you filed a joint return (or separate return) for some, but not all, of the tax years involved in figuring the carryback, list the years and specify whether joint (J) or separate (S) return for each ▶
- 5 If SSN for carryback year is different from above, enter **a** SSN ▶ and **b** Year(s) ▶
- 6 If you changed your accounting period, give date permission to change was granted ▶
- 7 Have you filed a petition in Tax Court for the year(s) to which the carryback is to be applied? Yes No
- 8 Is any part of the decrease in tax due to a loss or credit resulting from a reportable transaction required to be disclosed on Form 8886, Reportable Transaction Disclosure Statement? Yes No
- 9 If you are carrying back an NOL or net section 1256 contracts loss, did this cause the release of foreign tax credits or the release of other credits due to the release of the foreign tax credit (see instructions)? . . . Yes No

Computation of Decrease in Tax (see instructions)	2ND preceding tax year ended ▶ 12.31.2013		_____ preceding tax year ended ▶		_____ preceding tax year ended ▶	
	Before carryback	After carryback	Before carryback	After carryback	Before carryback	After carryback
	Note: If 1a and 1c are blank, skip lines 10 through 15.					
10 NOL deduction after carryback (see instructions)		109,921.00				
11 Adjusted gross income	46,398.	(65,523.)				
12 Deductions (see instructions)	6,100.	6,100.				
13 Subtract line 12 from line 11	40,298.	40,298.				
14 Exemptions (see instructions)	3,900.	3,900.				
15 Taxable income. Line 13 minus line 14	36,398.	36,398.				
16 Income tax. See instructions and attach an explanation	0.	0.				
17 Excess advance premium tax credit repayment (see instructions)	0.	0.				
18 Alternative minimum tax	4,463.	0.				
19 Add lines 16 through 18	4,463.	0.				

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions.

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Form 1045 (2015)

09C 006

Computation of Decrease in Tax (Continued)	2ND preceding		_____ preceding		_____ preceding	
	tax year ended ▶ 12.31.2013		tax year ended ▶		tax year ended ▶	
	Before carryback	After carryback	Before carryback	After carryback	Before carryback	After carryback
20 General business credit (see instructions)	0.	0.				
21 Net premium tax credit (see instructions)	0.	0.				
22 Other credits. Identify .e.i.t.c.	e.i.t.c. 0.	109,921.				
23 Total credits. Add lines 20 through 22	e.i.t.c. 0.	109,921.				
24 Subtract line 23 from line 19	4,463.	(109,921.)				
25 Self-employment tax (see instructions)	5,384.	5,384. 0.				
26 Additional medicare tax (see instructions)	0.	0.				
27 Net investment income tax (see instructions)	0.	0.				
28 Health care: individual responsibility (see instructions)	0.	0.				
29 Other taxes	pen. 3,029.	Interest. 0.				
30 Total tax. Add lines 24 through 29	9,847.27	0.				
31 Enter the amount from the "After carryback" column on line 30 for each year	0.					
32 Decrease in tax. Line 30 minus line 31	12,877.					

YOU CANNOT GET \$109,921⁰⁰ in EITC.

33 Overpayment of tax due to a claim of right adjustment under section 1341(b)(1) (attach computation)

Under penalties of perjury, I declare that I have examined this application and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Sign Here
Keep a copy of this application for your records.

Your signature: *[Signature]* Date: 5/16/16

Spouse's signature. If Form 1045 is filed jointly, both must sign. _____ Date: _____

Paid Preparer Use Only

Print/Type preparer's name: _____ Preparer's signature: _____ Date: _____

Check if self-employed

PTIN: _____

Firm's name ▶: _____ Firm's EIN ▶: _____

Firm's address ▶: _____ Phone no.: _____

** Requesting refund from a carryback adjustment from 2011 to 2013. I will be claiming the Earned Income Tax Credit.*