

FACT FINDING REPORT

Prepared at the request of the Board of Education of the
Scarsdale UFSD

Prepared by

The Law Office of Anthony J. Brock
Anthony J. Brock, Esq.
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SCOPE AND PROCESS OF INVESTIGATION

At the request of the Board of Education, I was asked to investigate the timing of communications from District employees to the Board regarding IRS notifications of penalties and interest that had been imposed against the District. My investigation included reviewing documentary evidence and interviewing numerous District employees including: Christine Tenner, a bookkeeper for the District; Jeffrey Martin, the District's Treasurer and Business Manager; Stuart Matthey, the District's Assistant Superintendent for Business and Facilities; Dr. Drew Patrick who at the time of the interview was serving as the District's Assistant Superintendent for Human Resources & Leadership Development; and Dr. Thomas Hagerman, the District's former Superintendent of Schools. I have been asked to issue findings of fact to the Board related to the timeline of the IRS matters and employee communications related thereto.

FINDINGS OF FACT

The following findings provide a timeline and the factual background¹ applicable to the communications involving District employees and the IRS tax matters beginning in March 2020 and continuing through March 2022².

1. February 6, 2020: A clerical error is made in the business office resulting in an underpayment of first quarter payroll tax deposits in the amount of \$900,000.
2. March 2020: The business office discovers the underpayment and pays the \$900,000 on March 27, 2020.
3. August 14, 2020: The business office erroneously applied the 2020 third quarter payroll tax payment to the 2020 second quarter.
4. October 15, 2020: The business office erroneously applied the 2020 fourth quarter payroll tax payment to the 2020 third quarter.
5. January 11, 2021: IRS Notice issued indicating a penalty due in the amount of \$174,798.60 related to the March 31, 2020, tax period.
6. January 2021: Business Manager Jeffrey Martin stated that he verbally alerted Christine Tenner that the January 11, 2021, IRS notice had been received.

¹ Many of my factual findings are based on the recollection of witnesses. In most instances the witnesses did not create written documents or emails memorializing the events as they occurred. Therefore, many of my findings herein reflect what a particular employee "stated" concerning the events set forth in the timeline.

² During the timeframe involving the IRS matters many employees were working remotely due to the COVID-19 pandemic. In addition, Ms. Tenner was on an approved leave of absence from February 2-5, 2021, and February 12 – March 12, 2021. Mr. Martin was on an approved leave of absence from September 22 – October 25, 2021.

7. Mr. Martin stated he notified Stuart Matthey that the January 11, 2021, IRS notice was received. Mr. Matthey stated that he did not learn of the IRS matters any earlier than July 2021. According to the witnesses, there were no emails or other written communications between Mr. Martin and Mr. Matthey at that time.
8. April 19, 2021: IRS notice issued indicating District owes \$176,212.19, for overdue taxes from the tax period ending March 31, 2020.
9. April 20, 2021: Mr. Martin and Ms. Tenner exchanged emails concerning the April 19, 2021 notice.
10. April 26, 2021: IRS notice issued indicating an additional penalty in the amount of \$539,370.11, had been added to the prior penalty due to the failure to make a proper deposit. The total amount due to the IRS including additional interest: \$715,683.71.
11. Mr. Martin stated he notified Mr. Matthey of the April 26, 2021, IRS notice. According to the witnesses, there were no emails or other written communications between Mr. Martin and Mr. Matthey at that time.
12. June 25, 2021: IRS issued a Notice of Intent to Levy in the amount of \$719,813.04, due by July 5, 2021.
13. July 14, 2021: Ms. Tenner stated she spoke with IRS Revenue Officer Heidi Smith (“Officer Smith”). Ms. Tenner and Mr. Martin learned at that time that the payments for fiscal quarters three and four of 2020 were inappropriately applied to the wrong quarters.
14. August and September 2021: multiple IRS Notices were received by the District:
 - August 9, 2021, overpayment in the amount of \$762,652.52 for September 30, 2020, tax period.
 - August 9, 2021, refund due of \$0.00 for September 30, 2020, tax period.
 - August 9, 2021, amount due of \$1,497,109.24 for December 31, 2020, tax period.
 - August 16, 2021, amount due of \$1,497,109.80 for December 31, 2020, tax period.
 - September 6, 2021, adjusted refund of \$0.00 for June 30, 2020, tax period.
 - September 6, 2021, refund due of \$0.00 for June 30, 2020, tax period.
 - September 6, 2021, amount due of \$1,254,336.60 for December 31, 2020, tax period.
 - September 13, 2021, amount due of \$1,309,840.20 for December 31, 2020, tax period.
15. September 15, 2021: Mr. Martin had a telephone conversation with IRS Officer Smith. Mr. Martin stated he told Officer Smith that he believed the District needed to contact an attorney and that Officer Smith replied that was not necessary because the District was cooperating, and the overdue payments were due to clerical errors. Mr. Martin further stated that Officer Smith told him that he should send a fax to the IRS asking them to hold all enforcement and to ask for a transcript. Mr. Matthey stated he was aware of this conversation.
16. September 15, 2021: Mr. Martin sent a fax to IRS Officer Smith indicating the District’s position and asking that the IRS “hold all enforcement.”
17. September 15, 2021: Mr. Matthey emailed attorneys Daniel Petigrow and Craig Olivo seeking a referral for a tax attorney. Mr. Olivo responded that attorney Frank Mayer from Bond, Schoeneck and King (“BS&K”) was available and expecting a call from Mr. Matthey.
18. September 15, 2021: Mr. Matthey did not call Attorney Mayer. After receiving the email from Attorney Olivo, Mr. Matthey received an email from Mr. Martin stating he had made “headway” with IRS Officer Smith and an attorney “may not” be needed.
19. September 20, 2021: Superintendent Dr. Thomas Hagerman stated he first learned of the IRS issues from Mr. Martin and Mr. Matthey on September 20, 2021.

20. September 21, 2021: Mr. Martin sent a fax to IRS Officer Smith providing a detailed summary of all payments to the IRS. He also acknowledged receipt of the Notice of Intent to Levy and the District's intention to fully cooperate with the IRS. He reiterated his request that the IRS hold all enforcement.
21. September 22, 2021: Mr. Martin emailed Mr. Matthey saying he believed the IRS would waive penalties and the interest would be between \$7,500-\$15,000.
22. October 12, 2021: IRS Notice of Federal Tax Lien/Right to request hearing is issued. The amount of the lien is \$1,309,118.34.
23. October 29, 2021: Mr. Martin stated he returned from his leave of absence and opened the envelope containing the IRS Notice of Lien on October 29, 2021.
24. October 29, 2021: Mr. Martin stated he notified Mr. Matthey of the tax lien.
25. October 29, 2021: Mr. Matthey stated he immediately notified Dr. Hagerman of the lien. Dr. Hagerman stated he did not learn about the tax lien until after the IRS appeal hearing on March 16, 2022. According to the witnesses, there were no emails or other written communications between Mr. Matthey and Dr. Hagerman at that time.
26. October 2021: Dr. Hagerman stated that he had another conversation with Mr. Martin and Mr. Matthey in late October 2021 when they provided a further update as to what work had been done with the IRS.
27. November 8, 2021: Mr. Martin and Mr. Matthey contacted Attorney Frank Mayer at BS&K for the first time.
28. November 19, 2021: District filed a request for appeal hearing with the IRS.
29. March 16, 2022: IRS appeal hearing held.
30. March 24, 2022: Dr. Hagerman notified Board President Karen Ceske by telephone and then emailed the Board that an Executive Session was necessary to discuss an IRS matter.
31. March 25, 2022: Mr. Matthey and Mr. Martin provided the Board of Education with a confidential memorandum explaining the IRS matters.

CONCLUSION

I did not find any evidence that the Board of Education received notice of the IRS matters any earlier than March 24, 2022. This concludes my findings of fact related to the timeline of events and employee communications to the Scarsdale UFSD Board of Education involving the IRS matters arising during the 2020-2021 and 2021-2022 school years.

Respectfully submitted,

Anthony J. Brock

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