Laura T. Beyer
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	)	
	)	CHAPTER 11
GRANITE CITY MECHANICAL, INC.,	)	
	)	CASE NO. 24-30751
Debtor.	)	

ORDER

Before the Court are Debtor Granite City Mechanical, Inc.'s Motion to Turnover (Doc. 145) and the U.S. Small Business Administration's ("SBA") Motion for Relief from Automatic Stay. The parties have fully briefed these motions. (*See* Docs. 145, 146, 150, 160, 163.) As set forth below, the Court DENIES Debtor's Motion to Turnover (Doc. 145) and GRANTS SBA's Motion for Relief from Automatic Stay.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 16, 2025, Debtor filed its Motion to Turnover seeking "a refund of taxes paid in the amount of $91,926.51" from the Internal Revenue Service ("IRS"). (Doc. 145 at 5.) The refund in question stemmed from Debtor's requests for Employee Retention Tax Credits ("ERTCs") for the third and fourth quarters of 2020. *Id.* at 4. According to Debtor, at the time of

the motion it had submitted five total requests for ERTC refunds to IRS, with refunds having previously been issued for three taxable periods and refund requests for the remaining two taxable periods (totaling $91,926.51) still pending. *Id.*

On June 18, 2025, SBA filed a response opposing the Motion to Turnover, arguing that even if Debtor was entitled to the pending ERTC refund requests, SBA had a right to offset such funds based upon the debt owed to SBA in the amount of $529,419.21 resulting from Debtor's COVID-19 Economic Injury Disaster Loan ("COVID EIDL").[1] (Doc. 146 at 1-3.)

Debtor filed a reply in support of its Motion to Turnover on September 3, 2025, arguing that SBA was not entitled to an offset based upon the statutory language of the CARES Act; because SBA's debt was not currently "past due" under the terms of the note; due to Congressional intent behind creating COVID EIDLs; as a matter of equity relating to no purported mutuality of obligation; and as a result of SBA's waiver of a right to setoff by failing to offset prior ERTC refunds. (Doc. 160 at 5-10.) Debtor concedes it holds an obligation with SBA through SBA's Economic Impact Disaster Loan program.

On September 9, 2025, SBA filed a surreply addressing Debtor's arguments and reiterating that it was entitled to setoff any remaining ERTC payments under statutory and common law. (*See* Doc. 163.)

The Court heard oral arguments on these matters on September 24, 2025, at which David A. Matthews and John C. Woodman appeared on behalf of Debtor and Assistant U.S. Attorney ("AUSA") Jonathan M. Warren appeared on behalf of SBA. During the hearing, AUSA Warren reported that the IRS informed him that morning that the IRS had concluded processing the remaining ERTC requests and determined Debtor was owed such refunds. It was also announced

[1] The IRS filed a separate response opposing Debtor's Motion to Turnover, explaining that IRS and SBA had a right to offset ERTC refunds "[t]o the extent Debtor receives a credit." (Doc. 150 at 2.) Subsequently, it was announced that Debtor has no outstanding federal tax liability.

that Debtor owed no tax liability to the IRS. Given this, and based upon the timing of the hearing relative to the settlement that Debtor reached with another creditor and the need for a quick determination of this matter, the parties consented to the Court construing SBA's briefing in opposition to the Motion to Turnover as a request for relief from the automatic stay to affect an offset. Thereafter, the parties' oral arguments focused on matters of law, and no factual dispute arose underlying the legal question of whether SBA had a right to offset the remaining ERTCs owed to Debtor.

The Court announced its ruling at a hearing on October 8, 2025, denying Debtor's Motion to Turnover and granting SBA's Motion for Relief from Automatic Stay. David A. Matthews appeared on behalf of Debtor and AUSA Jonathan M. Warren appeared on behalf of SBA.[2] The Court sets forth its ruling herein.

II. ANALYSIS

To establish a right to setoff, the United States must show: (1) a prepetition debt exists from the creditor to the debtor; (2) the creditor holds a prepetition claim against the debtor; and (3) the debt and the claim are mutual obligations. *In re Clean Burn Fuels, LLC*, 492 B.R. 445, 467 (Bankr. M.D.N.C.) *aff'd sub nom. Perdue BioEnergy, LLC v. Clean Burn Fuels, LLC*, 559 B.R. 130 (M.D.N.C. 2016).

As an initial matter, the issue of offset is now ripe, and with the consent of the parties the Court hereby treats SBA's opposition briefing (Docs. 146, 163) as a Motion for Relief from the Automatic Stay under 11 U.S.C. § 362(d)(1) for "good cause," namely, for the United States to exercise its right of offset against ERTCs owed to Debtor.

[2] Shortly before the September 24, 2025 hearing, Debtor circulated an unsigned declaration to the United States bearing a signature line for Debtor's owner. At that hearing, there was discussion about Debtor filing the declaration prior the October 8, 2025 hearing, though Debtor ultimately did not do so. At the October 8, 2025 hearing, Debtor noted it had been waiting to hear from counsel for IRS before filing the declaration but acknowledged its argument at the September 24, 2025 hearing was purely legal and the declaration was irrelevant.

Here, SBA has shown "good cause" by establishing its right to a setoff of the ERTC funds. First, the alleged tax overpayments relating to ERTC funds and debts owed to SBA arose prepetition. (*See* Claim No. 3-1.) Second, the United States holds these prepetition claims against Debtor. Third, there is mutuality between Debtor and the United States, as Courts routinely find that the United States is one party for mutuality purposes and can setoff claims held by different agencies. *In re BOUSA Inc.*, 2006 WL 2864964, *4 (Bankr. S.D.N.Y. Sept. 29, 2006) (citing *Cherry Cotton Mills v. United States*, 327 U.S. 536, 537 (1946)); *see also In re Chateaugay*, 94 F.3d 772, 779 (2d Cir. 1996) (United States is one party for mutuality purposes).

Debtor's arguments to the contrary are unavailing. Debtor's primary contention is that the statutory language of the CARES Act, 26 U.S.C. § 3134(b)(3), does not subject ERTC funds to a statutory right of offset, which is a question of statutory interpretation.[3] But the relevant language governing ERTCs is clear: "If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an *overpayment that shall be refunded under sections 6402(a)* and 6413(b)." 26 U.S.C. § 3134(b)(3) (emphasis added). In turn, section 6402(a) reads: "In the case of *any overpayment*, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and *shall, subject to subsection[] . . . (d), . . .* refund any balance to such person." (emphasis added). Subsection (d) governs the right of offset, with subsections 6402(d)(1)(A)-(B) providing that any overpayment "shall" be reduced by the amount of any debt owed to a federal agency and paid to such agency.

Thus, ERTCs are directly linked to a statutory offset right: section 3134(b)(3) states that ERTC overpayments "shall be refunded under" section 6402(a), the latter states that "any

[3] At the hearing, Debtor acknowledged this was a novel argument.

overpayments" are subject to offset in subsection (d), and subsections (d)(1)(A)-(B) provide for the offset of any overpayment on account of a debt owed to another federal agency.

Debtor argues that Congress could have substituted the word "under" with the phrase "in accordance with" in the CARES Act—specifically, language that ERTCs "shall be treated as an overpayment that shall be refunded *under* sections 6402(a) and 6413(b)"—to make it unambiguous that ERTCs must be treated as an overpayment via section 6402(d). 26 U.S.C. § 3134(b)(3) (emphasis added). Because of this, Debtor's statutory interpretation argument appears to rely on disregarding the phrase "under sections 6402(a) and 6413(b)." 26 U.S.C. § 3134(b)(3). However, "under" and "in accordance with" have synonymous meaning. *See* Pursuant To, *Black's Law Dictionary* (11th ed. 2019) ("pursuant to" synonymous with "under" and "in accordance with"). ERTCs are unambiguously subject to a statutory right of offset, and the balance of the language in the CARES Act citing to the offset statute simply cannot be ignored. 26 U.S.C. § 3134(b)(3).

At least two other U.S. Bankruptcy Courts have concluded that ERTCs are subject to a right of offset, which further bolsters this Court's decision. *In re Glob. Aviation Techs. LLC*, No. 23-10111, 2024 WL 3506432, at *1 n.1 & *4 (Bankr. D. Kan. July 19, 2024) (explaining that an ERTC was subject to a statutory offset under section 6402(d) based upon underlying COVID EIDL debt owed to SBA); *In re PS On Tap, LLC*, 669 B.R. 56, 63 (Bankr. C.D. Cal. 2025) (ERTCs subject to offset under section 6402(d)). Debtor's statutory interpretation argument is therefore unpersuasive.

Lastly, the Court briefly examines Debtor's remaining arguments.[4] Under the terms of the Modified Note, Debtor is in default on its debt to SBA such that the statutory offset in section 6402(d) applies. (*See* Claim No. 3-1 Part 2 at 2 (explaining default occurs, *inter alia*, after filing

[4] At the September 24, 2025 hearing, Debtor explained its remaining arguments were brought "in the alternative" to its statutory interpretation argument.

for bankruptcy or failing to pay taxes).) *See also In re Stewart Foods, Inc.*, 64 F.3d 141, 146 (4th Cir. 1995) (noting a prepetition claim is not transformed into a postpetition claim simply because the claim was unmatured on the petition date) (citation omitted).[5] Debtor's reliance on *In re Nielson*, 90 B.R. 172, 174 (Bankr. W.D.N.C. 1988) is inapposite—in that case, the Court found no "mention of the possibility of offsets by federal agencies in the legislative history of the Farm Disaster Assistance Act of 1987."

Moreover, there is no dispute that mutuality of obligation exists here. (*See* Claim Nos. 3-1 Part 2 at 2 (showing first modification of SBA note signed August 12, 2021); 16-1 at 4 (showing all IRS debt arose prepetition except for an estimate of $663.36 due to a missing tax return for the 09/30/2024 tax period).) As noted above, Courts routinely hold that agencies of the federal government have a mutuality of obligation, as the United States is considered one party for mutuality purposes. *See, e.g., In re BOUSA Inc.*, 2006 WL 2864964, at *4. The Court finds *In re Glob. Aviation Techs. LLC* to be particularly instructive, as Judge Herren reached this same conclusion on a set of facts that are substantially similar to the instant case. 2024 WL 3506432, at *4.

Nor has SBA waived its right of setoff.[6] Debtor presented no evidence that SBA intentionally relinquished its right of offset or ability to collect on its debt. *See In re Morris*, 616 B.R. 499, 504 (Bankr. N.D. Miss. 2020) (citations omitted) (outlining various circumstances where a party waived its right to setoff); *see also In re United Marine Shipbuilding, Inc.*, 198 B.R. 970,

[5] Debtor claims it would not have stopped making payments on its debt post-petition if SBA had perfected a UCC filing relating to the COVID EIDL, and it would therefore be inequitable to now find Debtor is in default. (Doc. 160 at 8.) However, the Court finds such a result is not inequitable because Debtor would have defaulted under the terms of the Modified Note and been subject to the United States' right of offset regardless of SBA's UCC filing. (*See* Claim No. 3-1 Part 2 at 2.) *See also* 11 U.S.C. § 506(a)(1) (defining an "allowed secured claim" as a lien or right to setoff).

[6] "Waiver" requires "(1) the existence, at the time of the alleged waiver, of a right, advantage or benefit; (2) the knowledge, actual or constructive, of the existence thereof; and (3) an intention to relinquish such right, advantage or benefit." *In re Mills Int'l, Inc.*, 570 B.R. 169, 191 (Bankr. E.D.N.C. 2017) (quoting) *Demeritt v. Springsteed*, 204 N.C.App. 325, 693 S.E.2d 719, 721 (2010).

978 (Bankr. W.D. Wash. 1996), *subsequently aff'd*, 146 F.3d 739 (9th Cir. 1998), *opinion amended and superseded on denial of reh'g*, 158 F.3d 997 (9th Cir. 1998) (inadvertent release of funds insufficient to waive future right of offset). The Court also notes the United States previously entered into a stipulation with Debtor preserving the United States' "ability to assert its right of offset" because, at that time, the IRS was still processing Debtor's ERTC requests. (*See* Doc. 126 at 2.) Accordingly, the United States has not waived its right of offset.

III. CONCLUSION

In sum, the United States has demonstrated a right to offset the ERTCs owed (but not yet paid) to Debtor based upon Debtor's COVID EIDL debt to SBA. For the reasons above, and good cause having been shown,

IT IS ORDERED that Debtor's Motion to Turnover (Doc. 145) is DENIED and SBA's Motion for Relief from Automatic Stay is GRANTED for good cause under 11 U.S.C. § 362(d)(1) such that the United States is authorized to offset Debtor's pending ERTC payments.

IT IS FURTHER ORDERED that, to the extent the IRS has mailed one or more checks to Debtor representing the ERTC funds discussed herein that are subject to the United States' right of offset, Debtor is instructed to return these uncashed checks to the IRS via the U.S. Attorney's Office at: U.S. Attorney's Office, Western District of North Carolina, 227 West Trade Street, Suite 1650, Charlotte, NC 28202.[7]

This Order has been signed electronically.
The Judge's signature and Court's seal
appear at the top of the Order.

United States Bankruptcy Court

[7] At the October 8, 2025 hearing, the Court ordered Debtor to return such checks to the IRS after Debtor's counsel reported that the IRS recently informed Debtor it would be placing these checks in the mail.