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EDC Company Sues GVI Over Decade-Long Tax Refund Delay, With \$300,000 in Interest Piling Up Each Quarter

Ocwen USVI seeks \$20 million in unpaid refunds as interest tops \$300,000 every quarter amidst GVI inertia

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A local loan servicing company is suing the Government of the Virgin Islands for money it says it is owed for income tax overpayments.

Ocwen USVI Services LLC, in a complaint filed with the District Court of the Virgin Islands on February 8, says that the Bureau of Internal Revenue owes it over \$20 million in tax refunds and interests.

The issue dates back to tax year 2013, when Ocwen Mortgage Services, a beneficiary of the Economic Development Commission program, made income tax payments of over \$17 million to BIR. The company's tax return filed that year — one year after official commencing operations in the USVI — showed an overpayment of \$927,546, which it elected to roll over to tax year 2014, according to documents filed in court.

The payments for tax year 2014 were over \$20 million which, when the company's tax return was filed, reportedly represented an overpayment of over \$14 million. Like the previous tax year, OMS decided to use the overpayment as a credit for the following year.

However in tax year 2015, the company realized a net operating loss, and asked BIR to refund the current credit balance of \$14, 225,083. In 2017, OMS filed an amended tax return for 2013 which resulted in a hefty decrease in assessed taxes. The balance created from that amended return – just over \$7.5 million – was also requested as a refund. Another amended tax return was filed, this time for tax year 2014. A balance of \$5.7 million resulting from that amendment was also requested as a refund.

The BIR launched an audit of OMS in July 2018, during which more requests for refunds were submitted, covering tax years 2013-2016.

Ocwen's lawsuit alleges that in 2019, BIR began to request extensions on the legally mandated time limit by which tax assessments must be done (generally three years according to the Internal Revenue Code). Ocwen reportedly agreed to extend the deadline for assessments for tax year 2015 in exchange for assurances that BIR would complete its audits for 2013 and 2015 by the end of 2019, and signed documents reflecting that arrangement.

However, in December 2019 the BIR reportedly changed its mind, saying that a refund for tax year 2015, the return for which was accepted by the Bureau the previous month, would not be paid until all audits had been completed.

In 2021, the audits concluded, with BIR accepting OMS's tax refund claims. In June of that year, the company reportedly began trying to schedule meetings with Director of Internal Revenue Joel Lee to discuss the government's repayment of the refunds, with no success.

In 2021, the government began a concerted effort to reduce its tax refund obligations, promising that it would become current on all tax refunds by the end of 2022. However, Ocwen says it was left out of the list of those who received refunds in 2021.

Letters sent to BIR reportedly went unanswered, and a promised payment plan from the Office of the Governor's chief legal counsel at the time, David Bornn, never materialized. In February 2022, Ocwen's attorney Marjorie Rawls Roberts texted Governor Albert Bryan Jr. directly about getting the payment plan put together.

Despite BIR's previous agreement that the refunds were owed, Governor Bryan reportedly responded via text with his opinion that providing refunds to companies receiving EDC tax benefits was "totally unacceptable." Nevertheless, when Mr. Lee, the BIR director, finally responded to Ocwen's many outreach emails in September of 2022, he promised that GVI would make quarterly payments of \$1 million starting at the end of 2022, "until some other arrangement can be made."

Attempts by Ocwen to meet with Mr. Lee to negotiate a faster repayment schedule were reportedly ignored until the company filed a lawsuit over the issue in November 2022. The

government settled the lawsuit the next month by agreeing to pay over \$20 million in refunds plus interest between January 2023 and December 2024.

The first payment of \$1 million was duly received on January 11 2023, four days ahead of the stipulated deadline. Ocwen then asked the court to dismiss the pending lawsuit without prejudice, which the court did.

A day before the second deadline of June 30, Ocwen said it received another payment, of just over \$7.62 million. That payment, the company says, was short of over \$189,000 due to errors in the calculation of statutory interest. That was the last time Ocwen says it received a refund cheque from the government.

When the next deadline date – December 31, 2023 – came around, government officials informed Ocwen that the Office of Management and Budget had placed a hold on the repayments so as to direct funds to other priorities. Communication with the V.I. Department of Justice reportedly acknowledged the breach of the agreement terms, but could not provide the company with a revised timeline as to when those outstanding and upcoming payments would be made.

Ocwen says that GVI, through its actions, has breached its own policy on issuing refunds in chronological order. “Since executing the agreement, the USVI has remitted tax refunds totaling approximately \$40 million to taxpayers other than Ocwen for tax years up to 2021 that occurred after the tax years (2013-2015) for which the USVI owes refunds to Ocwen,” the lawsuit claims.

Attorneys for Ocwen claim that the government is breaching its duty to Virgin Islanders by allowing this massive debt to remain on the books, accruing interest of over \$300,000 every quarter the refunds remain unpaid.

The company is asking the court to make an award for the tax refunds still outstanding, along with statutory interest on the outstanding balances, damages for the breach of the agreement between the two parties, and legal fees and court costs.

The government has yet to respond to the lawsuit.