

~ MEMORANDUM ~

TO: Patrice Garvin

FROM: Jennifer Hewitt and Leslie Davidson

DATE: January 26, 2024

RE: IRS Fine for Late Transmittal of Retiree Withholding Taxes

The purpose of this memo is to 1) alert you to a fine for \$40,665.91 that has been levied on the Town by the IRS for late transmittal of retiree withholding taxes by the Treasurer's Office in calendar year 2022, 2) provide background information on what led to the fine, and 3) outline options to pay it. Since the late transmittals continued into 2023, we anticipate receiving a fine for 2023 in the next few months, which could range from \$75,000 to \$250,000.

BACKGROUND

The Internal Revenue Service (IRS) has strict rules governing withholding taxes, the amounts deducted from employee paychecks and retiree pension checks for federal taxes, and the timing of transmittal of those taxes to the IRS. The Town of Belmont shares a tax ID number with the Belmont Retirement Board, and it has been the longstanding practice for the Treasurer's Office to manage transmittal of both the payroll and pension deductions to the IRS. Payroll transmittals happen weekly and pension transmittals happen monthly, in line with payment schedules. The rule is that the IRS must receive transmittal of withholding taxes within 5 days of weekly payments, and by the 7th of the following month for monthly payments.

In August 2022, there was a significant transition in the Treasurer's Office. The Assistant Treasurer who was responsible for the day-to-day functioning of the office left and was replaced by an internal candidate who was not adequately trained to maintain the same level of office functioning and did not receive sufficient ongoing support from the Treasurer. As a result, several key areas lagged, including transmittal of the pension withholding to the IRS. It may not have been clear that this step was needed – the Retirement Board processes all aspects of monthly pension payments, including calculating withholding taxes. Rather than sending the withholding taxes to the IRS themselves, the Retirement Board deposits the relevant amounts into the Town's bank account, and the Town then processes payment to the IRS, usually on the same day of receipt. From August 2022 through July 2023, the monthly pension withholding was not transmitted to the IRS and remained in the Town's bank account.

The Treasurer's Office was not reconciling its bank accounts after July 2022. Because of that, the Retirement Board payments were not flagged and the missed transmissions were not caught. Starting in April 2023, a consultant was hired to help bring the monthly reconciliations up-to-date, and not let the full workload fall on a new Treasurer. We are still working through some reconciling items, but bank balances are now accurately reflected in MUNIS, and Accounting and Treasury have established a process to compare the bank account balances against those in the General Ledger on a monthly basis.

To support the weekly and monthly transmittals, the IRS requires that summary reporting be done. Weekly transmittals require a quarterly report within 2 weeks of the end of the quarter via Form 941; monthly transmittals require an annual report by the end of January via Form 945.

The Town completed its Form 941 reporting in 2022 but did not submit its Form 945 report as required in January 2023.

When Leslie Davidson started as Treasurer on June 26, 2023, she immediately began applying her experience with payroll in other communities to resolve some inefficiencies in the Belmont process. One early change was to sign up for the IRS Electronic Federal Tax Payment System (EFTPS), which supports payment of withholding taxes via electronic funds transfer (EFT) rather than by sending a wire to the IRS which had been longstanding practice. This is significant because establishing such an account allows the Town to receive credit for payments immediately rather than waiting for the IRS to match up a wire to our account, and creates a payment history which allows staff to more readily identify when a payment has been missed.

In August 2023, Leslie realized that pension withholding had not been transmitted and the Form 945 had not been filed and reached out to the IRS for advice. They advised that she transmit the missing funds as soon as possible and to file Form 945 for 2022, noting that the funds would be transmitted via EFTPS. She followed their advice and completed the fund transfers and reports within days. In October, she received a fine from the IRS for \$134,237.49 for late transmittal of the pension withholding taxes and late filing of Form 945, which she appealed. The final ruling was received in December, reducing the amount to \$40,665.91, which will continue to accrue interest penalties until paid. There are no further opportunities for appeal. The 2023 Form 945 was filed on January 11, 2024 – we anticipate receiving an initial fine by the end of February, which will likely range from \$75,000 to \$250,000 and which we will appeal. The final penalty may not be received until April 2024. It is impossible to know with any certainty what the final fine amount will be, just that there will certainly be one.

FUNDING SOURCES FOR PAYMENT

Since the lapse for reporting happened in the Treasurer's Office, the fine is a Town responsibility. There are several funding sources to consider for payment –

1. Treasurer's Office funds – since the Treasurer's Office has not filled a position that had been budgeted for FY2024, and some expenses are trending lower than anticipated, there are some funds available which should be sufficient to cover the 2022 fine; however, they may not be sufficient to cover the 2023 fine. The total amount available is \$70,000.
2. Warrant Committee Reserve – no other needs have so far been identified for the reserve, but it is still early in the year, and the snow has just started falling. The total FY2024 reserve appropriation is \$400,000. This cost would certainly be eligible for applying reserve funds.
3. Current Year Supplemental Request – We could bring the 2023 fine to Town Meeting for a supplemental request in June. While it would be an uncomfortable conversation to have, it may be necessary depending on the size of the fine and the availability of other funds.

RECOMMENDATION

We recommend paying the 2022 fine from available resources at the Treasurer's Office and waiting to determine sources for the 2023 fine once we receive the post-appeal amount.

APPENDIX – TIMELINE OF EVENTS

August 10	Last day of Assistant Treasurer; he continued to assist the transition for a few months on a limited part-time basis
August 31	Final pension withholding transmittal in 2022
Sept. 30	Pension withholding received for September pension checks, not transmitted
Oct. 31	Pension withholding received for October pension checks, not transmitted
Nov. 30	Pension withholding received for November pension checks, not transmitted
Dec. 31	Pension withholding received for December pension checks, not transmitted
Jan. 31, 2023	Form 945 annual report due to IRS for pension withholding, not filed
Jan. 31	Pension withholding received for January pension checks, not transmitted
Feb. 28	Pension withholding received for February pension checks, not transmitted
March 31	Pension withholding received for March pension checks, not transmitted
April 4	Treasurer Floyd Carman's last day; Jennifer Hewitt appointed as Acting Treasurer while search for permanent Treasurer is undertaken
April 30	Pension withholding received for April pension checks, not transmitted
May 31	Pension withholding received for May pension checks, not transmitted
June 26	New Treasurer Leslie Davidson starts work in Belmont
June 30	Pension withholding received for June pension checks, not transmitted
July 31	Pension withholding received for July pension checks, not transmitted
August 1	Call to IRS to get advice on missing transmissions and Form 945
August 1	Form 945 submitted for 2022
August 11	PIN requested for IRS EFTPS site
August 14	Payments sent to IRS – \$398,842.68 for 4 months in CY2022 (September to December, 2022); \$705,171.02 for 7 months in CY2023 (January to July, 2023)
August 31	Pension withholding received for August pension checks, transmitted to IRS. Pension withholding was transmitted for all remaining months in 2023.
October 30	Initial fine for \$134,237.49 received from IRS for missing 2022 withholding transmissions; appeal filed
December 11	Result of appeal received, bringing total down to \$40,665.91, with interest accruing daily
January 11, 2024	Form 945 annual report for 2023 filed with IRS
February 20-29	Initial notice for Fine for 2023 withholding anticipated, will be appealed
April 15-30	Final fine notice anticipated to be received