

ILLINOIS INDEPENDENT
TAX TRIBUNAL

John E. and Frances L. Rogers,)	
)	
Petitioners,)	
)	14 TT 153
v.)	
)	
ILLINOIS DEPARTMENT)	Judge Brian F. Barov
OF REVENUE,)	
)	
Respondent.)	

MOTION TO STAY PROCEEDINGS PENDING FINAL ORDER AND JUDGMENT IN GOVERNING
UNITED STATES TAX COURT PROCEEDINGS DOCKET NO. 20882-14

Petitioners, John E. Rogers and Frances L. Rogers, husband and wife, hereby move the Illinois Independent Tax Tribunal to stay these proceedings pending the issuance of a final order and judgment in United States Tax Court case Docket No. 20882 – 14. The petition in that case presents issues under the IRC which will determine petitioners adjusted gross income for 2002 with trial court finality. At the conclusion of that case in the comparable federal court the key issue of adjusted gross income in this case will have been determined and the stay petitioners request can be lifted and these proceedings concluded.

LEGAL ARGUMENT

Illinois Income Tax is imposed on the petitioners for 2002 based on their federal adjusted gross income as adjusted by Illinois modifications. That very issue is now pending in the United States Tax Court in Docket No. 20882 – 14.

The “Notice” was issued by the Department on June 9, 2014, assessing tax in the amount of \$72,000 and interest in the amount of \$37,153.56 for the taxable period 2002.

Petitioners understand that the "Notice" (attached to the Petition) was based on a communication from the IRS to which petitioners are not privy.

The IRS refused to respond to petitioners' numerous requests for a hearing on the merits of the matter as provided for by federal statutes and due process. The petitioners filed their petition with the United States Tax Court and with this court to achieve a hearing on the merits of their 2002 taxes.

Jurisdiction and final determination of petitioners' 2002 adjusted gross income lies with the United States Tax Court. Therefore it is appropriate for this court to stay proceedings in this case at least until a final determination is made at the federal court level.

Petitioners believe that four key factors witness this courts grant of the stay requested:

1. Petitioners should win on the merits in United States Tax Court for the reasons set forth in their Tax Court Petition. 735 ILCS 5/3 – 111(a)(1)(iii).
2. The State of Illinois will not be irreparably harmed because it receives money with interest when the matter is finally resolved. Indeed petitioners have offered to settle the matter and pay the State of Illinois the correct amount of tax at 3% of \$375,000 plus interest. \$375,000 is 75% of the actual loss claimed by petitioners on their 2002 income tax return. 735 ILCS 5/3 – 111(a)(1)(ii).
3. There no other interested parties to whom the stay could injure. 735 ILCS 5/3 – 111(a)(1)(ii).
4. The stay would promote public policy that the correct determination of petitioners' 2002 adjusted gross income be made and that the State of Illinois not be unjustly enriched at the expense of petitioners. 735 ILCS 5/3 – 111(a)(1)(iii).

All four factors weigh heavily in favor of a stay. A stay is an injunction appealable by the State of Illinois to the appellate court of Illinois. Such appeal would not be well received for the reasons stated in this motion.

Illinois common law also authorizes this court to issue a stay and may require that a stay be issued. In *Khan v. BDO Seidman, LLP et. al.*, 2012 IL App (4th) 120359, 977 NE2d 1236, 365 IllDec 137, the Illinois appellate court ruled that when the same or overlapping issues were already on appeal to the Supreme Court of Illinois it was appropriate to stay proceedings at the trial court level until the final determination was made by the Supreme Court. Petitioners believe that a comparable situation of duality of jurisdiction with a superior court on the merits arises in this case. The Khan court also relied on existing case law found in *Shaw v. Citizens State Bank of Shipman*, 185 Ill App. 3d 79 (1989) in which the appellate court ruled that a stay of proceedings until resolution of an appeal to the Illinois Supreme Court was appropriate and not an abuse of discretion. The Khan court also relied on its prior decision in *Wiseman v. Law Research, Inc.*, 133 Ill. App. 2d 790 (1971) in enforcing the stay to avoid contradictory decisions.

Federal common law buttresses this court's authority to issue a stay in these proceedings. Federal law does not even require the other court's decision to be dispositive in order to justify a stay. See *Landis v. North American Company*, 299 U.S. 248, 254 (1936). Here the dispositive nature of the United States Tax Court hearing requires a stay of these proceedings at least until the Tax Court has ruled.

Petitioners are entitled to the stay based on the conduct of the State of Illinois. The Notice attempts to tax petitioners on "net income" of \$1,184,185 from Abingdon when they had not received any such income. Petitioners claim the appropriate tax result is the straight

forward disallowance of 75% of petitioners' -\$495,000 reported loss from Abingdon in 2002. Petitioners offered to settle the case on that basis in written interchanges prior to issuance of the Notice. The State is proceeding on incorrect, misleading information from federal government clerks which has never been forced to withstand scrutiny.

The IRS did not audit the tax returns of the petitioners or of Abingdon for 2002 contrary to the statements made by respondent in the Notice. Only Wacker-Madison was audited. The IRS made no attempt to deal with the provisions of the Abingdon allocation of income and deductions set forth in the Abingdon operating agreement or otherwise, particularly allocations of cash. The IRS accordingly allocated to petitioners cash income from Abingdon in which the petitioners never partook.

Petitioners pursued a Collection Due Process hearing at which the miscalculations of the IRS would be reviewed and corrections made. See the notice of hearing which the petitioners received over two years ago which is attached to the petition. Numerous telephone calls to the appeals officer in Fresno went unanswered. The IRS adjustments are not final until the hearing is held and the appeals officer issues a notice of final determination which is appealable to the US Tax Court.

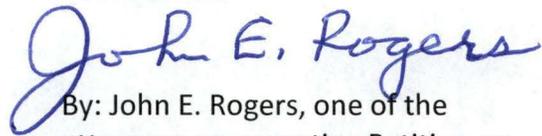
Petitioner believes the correct amount of increase in 2002 "net income" is 75% of the \$495,000 claimed deduction as it has previously offered to Respondent.

Lastly, the stay of proceedings enables petitioners to pursue their sole remedy at law, their petition to the United States Tax Court.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons Petitioners respectfully request that this honorable court stay all proceedings in this case pending a final determination of petitioners 2002 adjusted gross income by the United States Tax Court in Docket No. 20882 – 14.

JOHN E. AND FRANCES L. ROGERS,
PETITIONERS

A handwritten signature in blue ink that reads "John E. Rogers". The signature is written in a cursive style with a large initial "J".

By: John E. Rogers, one of the
attorneys representing Petitioners

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