

ILLINOIS INDEPENDENT TAX TRIBUNAL

JOHN E. ROGERS and FRANCES L. ROGERS)	
)	
Petitioner,)	
v.)	No. 14 TT 153
)	
ILLINOIS DEPARTMENT OF REVENUE)	Judge Brian F. Barov
)	
Respondent.)	

DEPARTMENT’S OBJECTION TO TAXPAYER’S MOTION TO STAY

The Illinois Department of Revenue, (the “Department”) by and through Lisa Madigan, Attorney General of and for the State of Illinois, herein responds in Opposition to Taxpayer’s Motion to Stay and in support of its Response, the Department states as follows:

1. The Independent Tax Tribunal Act (35 ILCS 1010/1-1 et seq.) (“the Act”) provides for a stay of proceedings when the Taxpayer is “a defendant in a criminal case pending in any court in this State involving the same conduct as the case before the Tax Tribunal.” 35 ILCS 1010/1-67.

2. Neither the Act, nor the administrative rules promulgated thereunder, address the stay of these proceedings absent a pending criminal case on the same facts. 35 ILCS 1010/1-67; 86 Ill. Admin. Code § 5000.10 et seq.

3. The general rule is that a stay of proceedings is a matter of convenience, not of right, and may be granted or denied in the exercise of the sound discretion of the court. Beck v. Communications Workers of America, 468 F.Supp. 87, 91 (D. Md. 1979). See 1A C.J.S. Actions § 319.

4. In exercising its discretionary power, the court should balance the competing interests of the judicial system and of the parties. A stay may be granted if it is justified by

circumstances which outweigh any potential harm to a party against whom it will operate, and should not be ordered if it will work injustice. *See* 1A C.J.S. Actions § 319.

5. Petitioner requests a stay on the basis that this proceeding and Petitioners' U.S. tax court petition are duplicative proceedings.

6. Petitioner claims that Taxpayer's 2002 federal income tax determination is currently pending before the U.S. Tax Court in Docket No. 20882-14. In Petitioner's petition in Docket No. 20882-14, Petitioner claims that the IRS should have issued Petitioner a Statutory Notice of Deficiency for the tax year ending December 31, 2002.

7. Filing a petition with the Tax Court does not in itself prove that the 2002 IRS determination is not final, or that the proceedings are duplicative. It only shows that Taxpayer filed a petition with the Tax Court requesting review of the IRS's actions. Department notes that on November 3, 2014, the Commissioner of Internal Revenue (Respondent) filed a Motion to Dismiss for Lack of Jurisdiction in Docket No. 20882-14.¹

8. Petitioners' 2002 Federal Adjusted Gross Income of \$1,184,185 is final as a matter of law because 1) John E. Rogers signed a Form 870-LT in which he agreed to "the assessment and collection of any deficiency attributable to partner level determinations . . .," and 2) the IRS Account Transcript shows that the IRS finally determined the amount of the adjustment on May 25, 2011 by adjusting Petitioners' federal account transcript. 26 U.S.C. 6224(b) and 6213(d); Nestor v. C.I.R., 118 T.C. 162, 169 (2002).

¹ The U.S. Tax Court is not Taxpayer's only remedy. The Internal Revenue Code provides a procedure for making changes to a Taxpayer's final federal income tax determination. To change a determination by the IRS, and to request the refund of an overpayment, a taxpayer should timely file an amended return to report the changes. 26 U.S.C. § 6511; 26 CFR § 301.6511. If the IRS denies the changes by issuing a Notice of Deficiency, the taxpayer has a right to protest/appeal the determination. 26 U.S. Code § 6212; § 6213. The Internal Revenue Code prohibits civil suits for the recovery of a refund where no amended return has been filed. 26 U.S.C. § 7244 (a).

9. Because Petitioners' 2002 Federal Adjusted Gross Income of \$1,184,185 is final, Department's Notice of Deficiency is correct.

10. However, even if the U.S. Tax Court determines that the IRS should have issued a Statutory Notice of Deficiency to Taxpayer for the year ending December 31, 2002, Petitioner will have the opportunity to file an Illinois Amended Return to report a federal change to Petitioner's federal adjusted gross income for 2002. 35 ILCS 5/506(b); 5/911(b).

11. There is no genuine issue of material fact to be decided by this Tribunal. The only issues in this case are issues of law. Thus, there is no need to stay this matter or to delay the resolution of this case.

12. Additionally, Petitioner is acting primarily for purposes of delaying the Department's collection of this tax as shown by:

- a. Taxpayer's sophistication in federal income tax law;
- b. Taxpayer's representations to the Department's auditor,
- c. Taxpayer's failure to provide the represented documentation to the auditor showing that the IRS assessment was not final, and
- d. Taxpayer's success in delaying the issuance of a Notice of Deficiency by the Department – it took more than 14 months from initiation to notice for the auditor to close this audit, which consisted of a single issue: whether Taxpayer's 2002 IRS assessment was final.

13. Finally, the Department may be prejudiced in collecting the liability if Petitioners' Motion to Stay is granted.

14. For the above reasons, there is no reason to delay the resolution of this matter.

15. Department hereby incorporates its Motion for Summary Judgment and Motion for Bond as if fully set forth in this paragraph.

WHEREFORE, the Department requests this Tribunal enter an Order

- a) Denying Taxpayer's Motion for Stay; or
- b) Granting Department's Motion for Bond if Taxpayer's Motion for Stay is Granted; and
- c) Any further relief this Tribunal deems just.

Respectfully submitted,

Illinois Department of Revenue
By: LISA MADIGAN, Attorney General, State of
Illinois

By: _____
Jennifer Kieffer
Special Assistant Attorney General

Date: December 1, 2014

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