

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 MOTION TO DISMISS
PURSUANT TO SECTION 2-615 OF THE CODE OF CIVIL PROCEDURE**

The Illinois Department of Revenue, (the “Department”) by and through Lisa Madigan, Attorney General of and for the State of Illinois, respectfully requests this Tribunal enter an order dismissing the Petition and in support of its Motion states as follows:

1. Section 2-615 of the Illinois Code of Civil Procedure provides that a party may move to dismiss a pleading if it is “substantially insufficient in law.” 735 ILCS 5/2-615.
2. Section 2-612 of the Code states: “(a) If any pleading is insufficient in substance or form the court may order a fuller or more particular statement.” 735 ILCS 5/2-612.
3. The Independent Tax Tribunal Regulations (86 Ill. Admin. Code § 5000.100 et seq.) set certain minimum standards for a Petition filed with the Tribunal. 86 Ill. Admin. Code § 5000.300(a).
4. Regulation 5000.300(a)(F) requires that a Petition have “separately numbered paragraphs stating, in clear and concise terms a summary of the errors of fact or law that the petitioner alleges have been made by the Department (e.g., in issuing the Statutory Notice), together with a statement of the facts or law upon which the petitioner relies to establish the errors.” 86 Ill. Admin. Code § 5000.300(a)(F).

5. Although Taxpayer's petition contains more than twenty paragraphs, the Petition does not contain a single numbered paragraph.

6. Additionally, Taxpayer's petition is in narrative paragraph form rather than the pleading form required by Regulation 5000.300(a)(F) and Illinois Code of Civil Procedure Section 2-603, which requires each separately numbered paragraphs to contain "a separate [factual] allegation." 735 ILCS 5/2-603.

7. Finally, the Petition does not follow the "Petition Instructions" or the "Petition Template" available on the Independent Tax Tribunal website (<http://www.illinois.gov/taxtribunal/forms/Pages/default.aspx>).

8. Because the Petition does not conform to the above rules, the Department cannot conform its Answer to the form required in Rule 5000.300(b)(2), which requires that the Answer "contain numbered paragraphs corresponding to the petition." 86 Ill. Admin. Code § 5000.300(b).

WHEREFORE, the Department requests this Tribunal enter an Order

- a) dismissing the Petition; or
- b) Ordering Taxpayer to file an Amended Petition that conforms to the Rules; and
- c) Relieving the Department of its obligation to file its Answer until such Amended Petition is filed; and
- d) 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: August 20, 2014

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Notice of Motion

To: John E. Rogers
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PLEASE TAKE NOTICE that on August 20, 2014, the Department filed the attached **Motion to Dismiss** in the above captioned case with the Illinois Independent Tax Tribunal, 160 N. LaSalle, Room N506, Chicago, Illinois.



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Proof of Service

I, Jennifer Kieffer, an attorney for the Department of Revenue, state that I have this 20th day of August, 2014, served the foregoing Notice of Motion and attached Motion to Dismiss upon the person(s) to whom said Motion is directed, by email to jer@jerogers.com.



Jennifer Kieffer