

**ILLINOIS INDEPENDENT TAX TRIBUNAL**

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

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**MEMORANDUM OF LAW  
IN SUPPORT OF DEPARTMENT’S MOTION FOR BOND**

The Illinois Department of Revenue, (the “Department”) by and through Lisa Madigan, Attorney General of and for the State of Illinois, and hereby submits its Memorandum of Law in support of its requests that this Tribunal order Petitioners to post a bond equal to 25% of the liability at issue as provided in Section 1-45(c) of the Independent Tax Tribunal Act.

**I. INTRODUCTION**

This case concerns the Illinois income tax of John E. Rogers & Frances L. Rogers (“Taxpayer”) for the tax year ending December 31, 2002. This case poses two issues: First, is the IRS assessment “agreed to or finally determined for federal tax purposes? And second, does the Department’s Notice of Deficiency correctly determine the amount of Illinois income tax resulting from that IRS final assessment<sup>1</sup> (referred to as a “federal change”)? Taxpayer argues that the IRS assessment is not final, and therefore, the Department’s Notice of Deficiency is premature. As discussed herein, this argument is unsupported by the law or facts of this case. Therefore, if a Motion to Stay these proceedings will be granted by this Tribunal over the Department’s objection, the Department requests this Tribunal require Taxpayer to post a bond.

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<sup>1</sup> The IRS terminology differs slightly from that of the Department. Unlike the IITA, the IRC does not use the term “final assessment.” The IRS uses the term “adjustment” to define examination items that are not yet final. Whereas, the Department uses the terms “adjustment” and “proposed assessment” for non-final assessments. The IRS uses the word “assessment” to refer to an adjusted item that is final. Whereas, the Department uses the terms “final assessment.”

## II. FACTS

- a. In 2002, John E. Rogers held a partnership interest in Abingdon Trading, LLC.
- b. In 2002, Abingdon Trading, held a partnership interest in Wacker Madison Fund, LLC.
- c. Pursuant to an examination of Wacker Madison Fund, LLC for the tax year ending December 31, 2002, the IRS made adjustments to the partnership items of Wacker Madison Fund, LLC.
- d. John E. Rogers executed a Form 870-LT on behalf of Abingdon Trading, LLC, in settlement of the Wacker Madison Fund, LLC partnership item adjustments.
- e. On May 25, 2011, the IRS examined the individual income tax account of Petitioners for the tax year ending December 31, 2002 (“Examination of TYE 2002”).
- f. As a result of the Examination of TYE 2002, the IRS assessed additional tax of \$356,006, resulting in federal adjusted gross income of \$1,184,185 and federal taxable income of \$1,123,281.
- g. Taxpayer’s IRS Account Transcript for the tax year ending December 31, 2002, dated September 4, 2014, shows Federal Adjusted Gross Income of \$1,184,185.
- h. The Department issued a Notice of Deficiency to Taxpayer on June 9, 2014, for the Tax year ending December 31, 2002, for underpayment of Illinois income tax, interest and penalties of \$72,336.86, resulting from a federal change affecting Illinois base income.
- i. Department has no record of receiving a Form IL-1040-X for Taxpayer for tax year ending December 31, 2002.

### III. ANALYSIS

Section 1-45(c) of the Independent Tax Tribunal Act provides:

(c) The Tax Tribunal may require the taxpayer to post a bond equal to 25% of the liability at issue (1) upon motion of the Department and a showing that (A) the taxpayer's action is frivolous or legally insufficient or (B) the taxpayer is acting primarily for the purpose of delaying the collection of tax or prejudicing the ability ultimately to collect the tax, or (2) if, at any time during the proceedings, it is determined by the Tax Tribunal that the taxpayer is not pursuing the resolution of the case with due diligence.

35 ILCS 1010/1-45(c). The Department asserts that Taxpayer's claim is frivolous and primarily for purposes of delay. 35 ILCS 1010/1-45(c)(A) and (B).

The Department issued a Notice of Deficiency to Taxpayer on June 9, 2014, for the Tax year ending December 31, 2002, for underpayment of Illinois income tax resulting from a federal change. A copy of the Notice is attached hereto as Exhibit 1. Section 506 of the Illinois Income Tax Act ("IITA") requires a taxpayer to notify the Department by filing an amended return within 120 days after a federal change<sup>2</sup> "is agreed to or finally determined for federal income tax purposes . . . ." 35 ILCS 5/506(b). Department has no record of receiving a Form IL-1040-X for Taxpayer for tax year ending December 31, 2002. Taxpayer asserts that the IRS adjustment to Taxpayer's Adjusted Gross Income for the tax year ending December 31, 2002 is neither "agreed to or finally determined," and therefore, the Department's Notice of Deficiency is premature. 35 ILCS 5/506(b); *See* Petition. Department asserts that Petitioner's claims are frivolous and made primarily for purposes of delaying the Department's collection of the tax assessment in the Department's Notice of Deficiency.

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<sup>2</sup> A "federal change" occurs when " the taxable income, any item of income or deduction, the income tax liability, or any tax credit reported in an original or amended federal income tax return of that person for any year or as determined by the Internal Revenue Service or the courts is altered by amendment of such return or as a result of any other recomputation or redetermination of federal taxable income or loss, and such alteration reflects a change or settlement with respect to any item or items, affecting the computation of such person's net income, net loss, or of any credit provided by Article 2 of this Act for any year under this Act, or in the number of personal exemptions allowable to such person under Section 151 of the Internal Revenue Code . . . ."

**a. Petitioner’s claims are frivolous.**

Neither the Independent Tax Tribunal Act nor the Illinois Income Tax Act defines the term “frivolous.” 35 ILCS 1010/1-1 et seq.; 35 ILCS 5/101 et seq. However, federal courts have defined this term in the context of income tax disputes. “A petition to the Tax Court, or a tax return, is frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law.”<sup>3</sup> Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir.1986); *See also* Jensen v. C.I.R., T.C. Memo. 2004-120, 2004 WL 1089079 (2004), Hyde v. C.I.R., 9 F.3d 112 (7th Cir. 1993), and Zook v. C.I.R., T.C. Memo. 2013-128, 2013 WL 2156564 (2013) (all holding that a position maintained by the taxpayer is “frivolous” where it is “contrary to established law and unsupported by a reasoned, colorable argument for change in the law.”)<sup>4</sup>

The Department asserts that Petitioners claims are frivolous because Petitioners’ claim that the IRS assessment is not final is contrary to established law and unsupported by a reasoned colorable argument for a change in that law. Coleman, 791 F.2d at 71.

**i. The Account Transcript is sufficient evidence of the finality of the IRS’s assessment to Petitioner.**

Section 506 of the Illinois Income Tax Act (“IITA”) requires a taxpayer to notify the Department of a federal change to Illinois base income by filing an amended return within “120 days after such alteration has been agreed to or finally determined for federal income tax

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<sup>3</sup> The Coleman court went on to hold that this definition of “frivolous” “. . . is the standard applied under Fed.R.Civ.P. 11 for sanctions in civil litigation, and it is a standard we have used for the award of fees under 28 U.S.C. § 1927 and the award of damages under Fed.R.App.P. 38.” Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir.1986). Here, the Department seeks only to establish that Petitioners claims are “frivolous,” as required by Independent Tax Tribunal Act Section 1-45(c) for the granting of a bond. Whether Petitioner should be subject to sanctions or fees because he “should have known that his position is groundless” is not the inquiry at this time. Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir.1986).

<sup>4</sup> Additionally, the term “frivolous” has been defined in terms of Section 1915 of the Federal Code of Civil Procedure (28 U.S.C.A. § 1915) as one which “lacks an arguable basis either in law or in fact.” People v. Hodges, 234 Ill.2d 1, 13 (2009) (citing Neitzke v. Williams, 490 U.S. 319, 327-328 (1989)). According to Neitzke, such claims include those “based on an indisputably meritless legal theory” as well as claims “whose factual contentions are clearly baseless,” e.g., “claims describing fantastic or delusional scenarios.” Id.

purposes or any federal income tax deficiency or refund, tentative carryback adjustment, abatement or credit resulting therefrom has been assessed or paid, whichever shall first occur.” 35 ILCS 5/506(b) (emphasis added). The Department’s position, as described in its Notice of Deficiency, is that the IRS adjustment to Taxpayer’s 2002 federal adjusted gross income became final on May 25, 2011, and Taxpayer failed to notify the Department of the federal change (by filing a Form IL-1040-X) within 120 days after May 25, 2011. Therefore, the Department may issue a Notice of Deficiency at any time. 35 ILCS 5/905(d).<sup>5</sup>

An Account Transcript is sufficient to show that an IRS assessment is final. Nestor v. C.I.R., 118 T.C. 162, 169 (2002) (“ . . . the verification requirement with regard to the existence of an assessment (an “applicable” administrative procedure) is satisfied if the Appeals officers obtain Forms 4340 or transcripts of account which corroborate the relevant assessment information regarding the taxpayers.”); Perez v. C.I.R., T.C. Memo. 2002-274, WL 31427309 (2002) (holding that IRS assessments can be verified by means of an account transcript because it provides the identification of the taxpayer, the character of the liability assessed, the taxable period, and the amount of the assessment – all the information required by Treasury Regulation 301.6203–1).

In the case at bar, Taxpayer’s IRS Account Transcript for the tax year ending December 31, 2002 shows the IRS examined the individual income tax account of Petitioners and assessed

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<sup>5</sup> Section 905(d) of the IITA provides:

(d) Failure to report federal change. If a taxpayer fails to notify the Department in any case where notification is required by Section 304(c) or 506(b), or fails to report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, a notice of deficiency may be issued (i) at any time or (ii) on or after August 13, 1999, at any time for the taxable year for which the notification is required . . . ; provided, however, that the amount of any proposed assessment set forth in the notice shall be limited to the amount of any deficiency resulting under this Act from the recomputation of the taxpayer's net income, Article 2 credits, or Section 207 loss earned, incurred, or used in the taxable year for which the notification is required after giving effect to the item or items required to be reported. 35 ILCS 5/905(d).

additional tax of \$356,006 on May 25, 2011. A copy of the Transcript is attached hereto as Exhibit 2. Taxpayer's IRS Account Transcript for the tax year ending December 31, 2002, dated September 4, 2014, shows Federal Adjusted Gross Income of \$1,184,185 and federal taxable income of \$1,123,281. The Account Transcript is sufficient proof of the finality of the IRS's assessment of Adjusted Gross Income of \$1,184,185 on May 25, 2011. Nestor, 118 T.C. at 169; Perez, T.C. Memo. 2002-274. Taxpayer was required to file an amended return (Form IL-1040-X) with the Department within 120 days of May 25, 2011. Taxpayer has not filed a Form IL-1040-X for tax year 2002. Exhibit 1. Therefore, the Department properly issued the Notice of Deficiency. 35 ILCS 5/905(d).

**ii. The IRS was not required to issue a Notice of Deficiency to Taxpayer; the Form 870-LT Settlement Agreement of the partnership item adjustments to Wacker Madison Fund, LLC is binding on Petitioner.**

The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") requires that the IRS determine the tax treatment of any partnership item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item) at the partnership level. 26 U.S.C. § 6221.<sup>6</sup> Before the enactment of TEFRA, adjustments of partnership items were determined at the individual partner level, resulting in duplication of administrative and judicial resources and inconsistent results between partners. Huff v. Commissioner, 138 T.C. No. 11, p. 10 (March 19, 2012). To resolve this problem Congress enacted TEFRA, which created a single unified procedure for determining the tax treatment of all partnership items. Id. Pursuant to the procedures of TEFRA, assessments for nonpartnership

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<sup>6</sup> 26 U.S.C. 6223 requires that the IRS provide Notice to the partners of a partnership that has been selected for examination and of any adjustment resulting from the examination. Here, Petitioner John E. Rogers signed the Form 870-LT as the Tax matters Partner. Therefore, Petitioner J. Rogers had actual notice of the IRS's partnership adjustment.

item adjustments are subject to deficiency proceedings, whereas the tax treatment of a partnership item is determined at the partnership level. Id. citing 26 U.S.C. §§ 6221, 6212(a), and 6230(a)(2). An entity falls under the provisions of TEFRA if the entity is required to file a partnership return. Wolf v. Commissioner, T.C. Memo. 1991- 212, aff'd, 4 F.3d 709 (9th Cir. 1993); 26 U.S.C. 6231(a)(1)(A).

Under TEFRA, a settlement agreement between the IRS and a partner of the partnership is binding on the partner, including indirect partners (partners of a pass-through entity), with respect to the determination of partnership items for such partnership taxable year. 26 U.S.C. § 6224(c)(1).

In the case at bar, Wacker Madison Funds, LLC is a TEFRA Partnership because Abingdon Trading, LLC is a partner of Wacker Madison Funds, LLC and Abingdon Trading LLC files a Form 1065. Wolf v. Commissioner, T.C. Memo. 1991- 212, aff'd, 4 F.3d 709 (9th Cir. 1993); 26 U.S.C. 6231(a)(1)(A); See also Publication 541, p. 13. The IRS issued Abingdon Trading, LLC a Form 870-LT<sup>7</sup> as the result of changes to partnership items of Wacker Madison Funds, LLC partnership. See attached 870-LT. John E. Rogers executed that Form 870-LT on behalf of Abingdon Trading, LLC on June 19, 2008.<sup>8</sup> Pursuant to IRC Section 6224(c)(1), the

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<sup>7</sup> Federal courts hold that a Form 870 constitutes an agreement between the IRS and the taxpayer. In Smith v. U.S., 328 F.3d 760 (5th Cir. 2003), the Fifth Circuit Court of Appeals held that a Form 870 constituted an agreement between the taxpayer and the IRS based on the common law of contracts. Smith v. U.S., 328 F.3d 760, 767 (5th Cir. 2003). The court held that the unsigned Form 870 was an offer by the IRS for settlement and the signing of the Form 870 by the taxpayer was acceptance of that offer. Id. The court held that, in consideration for the agreement, the taxpayer gave up its right to file a pre-payment action in Tax Court and the IRS gave up its right to assess higher penalties. Id. The Smith court held that the taxpayer consented to the deficiencies agreed to in the Form 870, but taxpayer retained its right to file a refund action in either federal district court or the federal court of claims, but not in Tax Court. Id. at 768. In Nichols, the court held that “[a] Form 870 . . . memorializes an agreement that the Commissioner can assess a particular amount of tax.” Nichols v. C.I.R., T.C. Memo. 2007-5, p. 3 (U.S. Tax Ct. 2007).

<sup>8</sup> A Form 870-LT is not binding until the agreement is “approved by the Secretary, as evidenced by his signature, or the signature of his designee.” 26 U.S. Code § 7121. Because the attached Form 870-LT was received from Taxpayer, and not the IRS, it is signed by the Taxpayer, but not the Secretary. The Department has made a request to the IRS for documents, including the fully executed Form 870-LT. Here, the 870-LT is being used to show

Settlement agreement between Abingdon Trading, LLC, a pass-through partner in Wacker Madison Fund LLC, is binding upon the partners of Abingdon Trading, LLC, including John E. Rogers. 26 U.S.C. § 6224(c)(1); 26 CFR 301.6224(c)-2. By signing the 870-LT, John E. Rogers agreed to “the assessment and collection of any deficiency attributable to partner level determinations. . . .”<sup>9</sup> A copy of the Form 870-LT is attached hereto as Exhibit 3; 26 U.S.C. § 7121. Because John E. Rogers is an indirect partner<sup>10</sup> of Wacker Madison Fund, LLC, the IRS is not required to issue a Notice of Deficiency to Petitioner to assess John E. Rogers with the Wacker Madison Fund, LLC partnership item adjustment. 26 U.S.C. § 6223(a).

In summary, the partnership item adjustments to Wacker Madison Fund, LLC, agreed to in the Form 870-LT Settlement Agreement, for the tax year ending December 31, 2002, entered into by John E. Rogers on behalf of Abingdon Trading, LLC, were binding upon the Petitioner, an indirect partner of Wacker Madison Fund, LLC. 26 U.S.C. § 6224(c)(1); 26 CFR 301.6224(c)-2. Because the assessment was agreed to and memorialized in a Form 870-LT Settlement Agreement, the right to receive a notice of assessment was waived by both Abingdon Trading, LLC and Petitioner, John E. Rogers. Exhibit 3; 26 U.S.C. § 6224(b); 26 U.S.C. § 7121.

Because Petitioner, John E. Rogers, executed the Form 870-LT, the federal change alteration to his individual federal income tax was “agreed to” on June 19, 2008. 35 ILCS 5/506(b). Taxpayer failed to notify the Department of the federal change (by filing a Form IL-

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Taxpayer has brought a frivolous claim. According to a Letter from the IRS to Taxpayer dated July 10, 2012, the 870 Settlement Agreement became final on July 6, 2010. A copy of the Letter is attached as Exhibit 13.

<sup>9</sup> The 870 reads: “The undersigned taxpayer(s), in accordance with IRC section 6224(b) and 6213(d), also waive(s) the restrictions provided in IRC sections 6225(a) and 6213(a) and consent(s) to the assessment and collection of any deficiency attributable to partner level determinations, as set forth in the attached Schedule of Adjustments, plus any interest provided by law.”

<sup>10</sup> An Indirect partner is “a person holding an interest in a partnership through 1 or more pass-thru partners” 26 U.S. Code § 6231(a)(10). A Pass Through Partner is “a partnership, estate, trust, S corporation, nominee, or other similar person through whom other persons hold an interest in the partnership with respect to which proceedings under this subchapter are conducted.” 26 U.S. Code § 6231(a)(10).

1040-X) within 120 days after June 19, 2008. Therefore, the Department may issue a Notice of Deficiency at any time. 35 ILCS 5/905(d).

**iii. A Taxpayer may challenge only final assessments in an IRS Collection Due Process Hearing.**

Taxpayer argues that the IRS assessment of Taxpayer's 2002 Adjusted Gross Income is not final because Taxpayer is pursuing a Collection Due Process Hearing under Section 6330 of the Internal Revenue Code (26 U.S.C. § 6330(b)). However, a Collection Due Process Hearing is only for challenging collection actions of a final assessment, because the IRS may collect only final assessments. 26 U.S.C. § 6502; 26 C.F.R. § 301.6502-1; *See also* IRS Publication 1660; IRS Form 12153. Hence, if a taxpayer is issued a Notice of Intent to Levy or granted a Collection Due Process Hearing, the IRS's assessment must be final. 26 U.S.C. § 6502.

The Department does not dispute that Taxpayer was issued a Notice of Intent to Levy on January 1, 2012, which gave rise to the right to request a Collection Due Process Hearing pursuant to IRC Section 6330(b). Exhibit 2; 26 U.S.C. § 6330(b). Nor does the Department dispute that Taxpayer requested a Collection Due Process Hearing on or about February 6, 2012. Exhibit 2. Rather, the Department asserts that both the Notice of Intent to Levy and the Taxpayer's claim of an ongoing Collection Due Process Hearing support the legal conclusion that the IRS assessment of additional tax of \$356,006 for the tax year ending December 31, 2002, was final on May 25, 2011. Taxpayer's claims that the assessment is not final but that Petitioners are exercising their right to a Collection Due Process Hearing are "contrary to established law and unsupported by a reasoned, colorable argument for change in the law." Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir.1986).

**b. Taxpayer is acting primarily for purposes of delay.**

The Independent Tax Tribunal Act does not define the phrase “primarily for purposes of delay.” 35 ILCS 1010/1-45(c); 35 ILCS 1010/1-1 et seq.; 86 Ill. Admin. Code § Section 5000.350. However, Section 6673 of the Internal Revenue Code (26 U.S.C. § 6673) uses very similar language: “(1) Procedures instituted primarily for delay, etc.--Whenever it appears to the Tax Court that-- (A) proceedings before it have been instituted or maintained by the taxpayer primarily for delay, . . . the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of \$25,000.” 26 U.S.C. § 6673(a)(1)(A). Many courts have upheld sanctions on the basis that a taxpayer acted primarily for delay. However, the Department was not able to find a definition or test for what constitutes actions “primarily for delay.” Delay has been found where a Taxpayer requests a hearing or appeal but refuses to provide documentation. Sandvall v. C.I.R., 898 F.2d 455 (5<sup>th</sup> Cir. 1990); Rollercade, Inc. v. C. I. R., 97 T.C. 113 (1991). Courts have also held that a taxpayer acted for purposes of delay where the taxpayer advanced frivolous arguments. Zook v. C.I.R., T.C. Memo. 2013-128, 2013 WL 2156564 (2013); Garber v. C.I.R., T.C. Memo. 2012-47, 2012 WL 570728 (2012), aff'd 500 Fed. Appx. 540, 2013 WL 563289 (7<sup>th</sup> Cir. 2013); Burnett v. C.I.R., 227 Fed.Appx. 342, 2007 WL 1112671 (5<sup>th</sup> Cir. 2007). The Department notes that these cases are ones where sanctions were upheld, and therefore, the taxpayer’s delay was particularly egregious. The Department cites these cases only to show that advancing frivolous arguments or failing to provide requested documentation to the agency can constitute delay.

In the case at bar, the facts show that Petitioner is acting primarily for purposes of delay. The Taxpayer’s 2002 federal income tax adjustment was agreed to by Taxpayer upon the signing of the 870-LT on June 19, 2008. Exhibit 3; See Section a.ii., *Supra*. Taxpayer was on notice of the finality of the IRS assessment to Taxpayer’s 2002 federal adjusted gross income on May 27,

2011, when the IRS issued Taxpayer a letter with Form 4549-A and Form 886-A, which explained the items adjusted. A copy of that letter is attached hereto as Exhibit 4. However, the Taxpayer did not file an Illinois amended return (Form IL-1040-X) to report this federal change. 35 ILCS 5/506(b).

An audit of Taxpayer's 2002 federal change was initiated by the Department's auditor by letter dated March 25, 2013. A copy of that letter is attached hereto as Exhibit 5. That letter requested certain information from Petitioners/ Taxpayer. Having received no response to that letter, the auditor issued a letter dated April 26, 2013, requesting a response from the Taxpayer. A copy of that letter is attached hereto as Exhibit 6. On May 20, 2013, Taxpayer faxed a letter from the IRS Appeals Office dated March 22, 2012. A copy of that fax is attached hereto as Exhibit 7. That March 22, 2012 letter states: "This letter is our acknowledgement that we received your case for consideration in our Fresno Campus – Butler Appeals Office on March 5, 2012. Exhibit 7. Taxpayer did not include the previous IRS letter dated February 24, 2012 which states:

Dear Taxpayer:  
Thank you for your Form 12153 of Feb. 04, 2012.  
Your request for a Collection Due Process Hearing has been forwarded to our Appeals Office in Fresno, CA. Appeals will contact [you] upon receipt of the Form 12153 and furnish you with the name and telephone number of the Settlement Officer assigned to your case. ...

A copy of that letter is attached hereto as Exhibit 8.

In response to that fax, Department's auditor issued a letter dated May 22, 2013 asserting the auditor's determination that the IRS assessment was final. A copy of that letter and attachments are attached hereto as Exhibit 9. That letter contained a Notice of Proposed Deficiency and a Form ICB-1 Request for Informal Conference Board Review. Taxpayer

completed and returned the ICB-1. See Exhibit 10, p. 3, EDC-5. By letter dated September 19, 2013, Taxpayer was granted a review before the Informal Conference Board. A copy of that letter is attached hereto as Exhibit 11. By email on January 14, 2014, Taxpayer withdrew his request for ICB review. A copy of that email is attached hereto as Exhibit 12. The ICB case was closed and the matter re-referred to the auditor to close the audit. On June 9, 2014, the Department issued the Notice of Deficiency to Taxpayer for the tax year ending December 31, 2002. Exhibit 1. Now, Petitioner/Taxpayer has requested a Stay of these proceedings to further delay the collection of Illinois income tax for tax year ending December 31, 2002.

As described above, Petitioners' arguments that the IRS assessment is not final are frivolous. See Section III. a. *Supra*. Additionally, Taxpayer should know that these arguments are frivolous. Petitioner, John E. Rogers, is a Harvard Law graduate and an experienced attorney who has practiced in federal income tax law for several decades.<sup>11</sup> In fact, he holds himself out as an advisor in U.S. tax controversy matters. See [http://www.jerogers.com/site/epage/69303\\_782.htm](http://www.jerogers.com/site/epage/69303_782.htm), last visited October 27, 2014. Additionally, he has devised several sophisticated tax shelters. Superior Trading, LLC v. C.I.R., 728 F.3d 676 (7th Cir. 2013) and Rogers v. C.I.R., 728 F.3d 673, (7th Cir. 2013). Therefore, one must conclude that Taxpayer, a knowledgeable federal income tax attorney and advisor, is familiar with the Internal Revenue Code and the IRS's process for routine settlements of audit determinations and the issuance of Notices. If Petitioner is aware of these routine procedures, his only reason for filing this protest - and asserting that the IRS assessment is not final - must be to delay the collection of Illinois income tax, penalty and interest by the Department.

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<sup>11</sup> According to the Illinois ARDC, John Edward Rogers was admitted to practice law in Illinois in 1967.

Petitioner's actions show that Taxpayer is proceeding with this action primarily to delay the collection of Illinois tax, and has been successful in delaying the collection of that tax for more than seven years – since June 19, 2008.

#### **IV. CONCLUSION**

For the above reasons, the Taxpayer's claim is frivolous and primarily for purposes of delaying the collection of the Department's duly assessed tax. The Department requests this Tribunal find that Taxpayers claim is frivolous, or in the alternative, find that Taxpayer's claim is made primarily for purposes of delaying the collection of tax, and Grant Department's Motion for Bond.

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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ILLINOIS INDEPENDENT TAX TRIBUNAL

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

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CERTIFICATE OF RECORDS

It is hereby certified under authority provided by the Illinois Compiled Statutes, that the attached documents, records and/or memoranda, offered herein for the purpose of proving the determination of the Department of Revenue which is at issue, are true, correct and exact originals or reproductions of documents, records and/or memoranda made, kept or maintained on file by the Department in the ordinary course of its business.

To the extent such documents or records included herein consist of computer generated data, it is further certified that such information is a true and exact representation of records properly entered into standard electronic computer equipment in the regular course of the Department's business, at or reasonably near the time of occurrence of the facts recorded, from trustworthy and reliable information.

  
\_\_\_\_\_  
Brian Hamer, Director  
Illinois Department of Revenue

Dated: December 1, 2014

# Notice of Deficiency

for Form IL-1040, Individual Income Tax Return



June 9, 2014



Letter ID: CNXXX15951316160

#BWNKMGV  
#CNXX X159 5131 6160#  
JOHN E. and FRANCES L. ROGERS  
162 ABINGDON AVE  
KENILWORTH IL 60043-1202

**Taxpayer ID:** XXX-XX-8779  
**Reporting period:** December 2002  
**Total Deficiency:** \$72,336.86  
**Balance due:** \$72,336.86



We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

**If you agree to this deficiency,** pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your Social Security number on your check, and mail a copy of this notice along with your payment.

**If you do not agree, you may contest this notice by following the instructions listed below.**

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed but the total penalties and interest is more than \$15,000,** file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases,** file a protest with us, the Illinois Department of Revenue, within **60 days** of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, **Format for Filing a Protest for Income Tax**, (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case,** you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, **Notice of Payment Under Protest** (available on our website at [tax.illinois.gov](http://tax.illinois.gov)), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

Brian Hamer  
Director

ILLINOIS DEPARTMENT OF REVENUE  
AUDIT BUREAU  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

(217) 558-4960

# Statement

Date: June 9, 2014  
Name: JOHN ROGERS  
Taxpayer ID: XXX-XX-8779  
Letter ID: CNXXX15951316160

## Reasons for deficiency

We obtained information from the Internal Revenue Service under authorization of the Internal Revenue Code, Section 6103(d). We determined that you did not timely notify us of a final federal change (e.g., RAR, federal amended return). [35 ILCS 5/506(a), (b)]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2010, through November 8, 2010, your penalty and interest amounts may be doubled. [86 Ill. Admin. Code 520/101(b)]

## Penalties

## Interest

Interest on tax in the amount of \$37,153.86 has been computed through June 9, 2014.

# Statement

Date: June 9, 2014  
Name: JOHN ROGERS  
Taxpayer ID: XXX-XX-8779  
Letter ID: CNXXX15951316160

## Computation of deficiency

Reporting Period: 31-Dec-2002

|   |                |
|---|----------------|
| Adjusted gross income                             | \$1,184,185.00 |
| Plus additions                                    |                |
| Federally tax-exempt interest income              | \$1.00         |
| Minus subtractions                                |                |
| Social Security / retirement benefits             | -\$4,867.00    |
| IL income tax overpayment                         | -\$2,554.00    |
| Base income                                       | \$1,176,765.00 |
| Minus exemptions                                  | -\$4,000.00    |
| Net income  | \$1,172,765.00 |
| Tax amount  | \$35,183.00    |
| Total Tax (After Recapture of Investment Credits) | \$35,183.00    |
| Tax Due   | \$32,417.00    |
| Plus interest on tax through June 9, 2014         | \$37,153.86    |

Total deficiency \* \$72,336.86

If you intend to pay under protest, you must pay this total deficiency amount.

## Computation of balance due

|                              |               |
|------------------------------|---------------|
| Deficiency (this notice)     | \$72,336.86   |
| Minus IL income tax withheld | -\$2,766.00   |
| Refunds                      | \$2,766.00    |
| Balance due                  | * \$72,336.86 |

## Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

## Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.



|   |
|---|
| This Product Contains Sensitive Taxpayer Data |
|---|

# Account Transcript

|                  |              |
|------------------|--------------|
| Request Date:    | 09-04-2014   |
| Response Date:   | 09-04-2014   |
| Tracking Number: | 100211667475 |

FORM NUMBER: 1040  
TAX PERIOD: Dec. 31, 2002

TAXPAYER IDENTIFICATION NUMBER: -8779  
SPOUSE TAXPAYER IDENTIFICATION NUMBER: -7927

JOHN E & FRANCES L ROGERS  
162 ABINGDON AVE  
KENILWORTH, IL 60043-1202-624

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

|                   |            |                      |
|-------------------|------------|----------------------|
| ACCOUNT BALANCE:  | 579,996.40 |                      |
| ACCRUED INTEREST: | 61,276.42  | AS OF: Sep. 15, 2014 |
| ACCRUED PENALTY:  | 85,121.25  | AS OF: Sep. 15, 2014 |

ACCOUNT BALANCE PLUS ACCRUALS  
(this is not a payoff amount): 726,394.07

\*\* INFORMATION FROM THE RETURN OR AS ADJUSTED \*\*

|                             |                      |
|-----------------------------|----------------------|
| EXEMPTIONS:                 | 02                   |
| FILING STATUS:              | Married Filing Joint |
| ADJUSTED GROSS INCOME:      | 1,184,185.00         |
| TAXABLE INCOME:             | 1,123,281.00         |
| TAX PER RETURN:             | 5,061.00             |
| SE TAXABLE INCOME TAXPAYER: | 33,080.00            |
| SE TAXABLE INCOME SPOUSE:   | 0.00                 |
| TOTAL SELF EMPLOYMENT TAX:  | 5,061.00             |

|  |               |
|--|---------------|
| RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) | Oct. 12, 2003 |
| PROCESSING DATE  | Nov. 10, 2003 |

## TRANSACTIONS

| CODE | EXPLANATION OF TRANSACTION   | CYCLE    | DATE       | AMOUNT       |
|------|--|----------|------------|--------------|
| 150  | Tax return filed   | 20034408 | 11-10-2003 | \$5,061.00   |
| n/a  | 09221-284-21335-3  |          |            |              |
| 806  | W-2 or 1099 withholding  |          | 04-15-2003 | -\$9,202.00  |
| 460  | Extension of time to file ext. Date 08-15-2003   |          | 04-15-2003 | \$0.00       |
| 460  | Extension of time to file ext. Date 10-15-2003   |          | 04-15-2003 | \$0.00       |
| 846  | Refund issued  |          | 11-10-2003 | \$4,141.00   |
| 922  | Review of unreported income  |          | 10-03-2004 | \$0.00       |
| 420  | Examination of tax return  |          | 09-29-2005 | \$0.00       |
| 240  | Miscellaneous penalty<br>IRC 6662(c), (d), (e), (f), (g), or (h)<br>Accuracy-Related Penalty | 20112508 | 05-25-2011 | \$35,600.60  |
| n/a  | 17251-145-13004-1  |          |            |              |
| 300  | Additional tax assessed by examination - quick<br>assessment                                 | 20112508 | 05-25-2011 | \$356,006.00 |
| n/a  | 17251-145-13004-1  |          |            |              |
| 190  | Interest charged for late payment  | 20112508 | 05-25-2011 | \$203,860.80 |
| 300  | Additional tax assessed by examination   | 20112908 | 08-01-2011 | \$0.00       |
| n/a  | 19247-595-18001-1  |          |            |              |
| 706  | Credit transferred in from<br>1040 200712  |          | 12-24-2008 | -\$600.00    |
| 706  | Credit transferred in from<br>1040 201012  |          | 04-15-2011 | -\$14,921.00 |
| 971  | Tax period blocked from automated levy program   |          | 12-12-2011 | \$0.00       |
| 971  | Account match for federal levy payment program   |          | 01-09-2012 | \$0.00       |
| 971  | Notice issued<br>CP 0090   |          | 01-09-2012 | \$0.00       |
| 971  | Collection due process Notice of Intent to Levy<br>-- issued                                 |          | 01-09-2012 | \$0.00       |
| 971  | Collection due process Notice of Intent to Levy<br>-- issued                                 |          | 01-09-2012 | \$0.00       |
| 971  | Collection due process Notice of Intent to Levy<br>-- return receipt signed                  |          | 01-11-2012 | \$0.00       |
| 971  | Collection due process levy (hearing) request<br>or levy and lien (hearing) request received |          | 02-06-2012 | \$0.00       |
| 971  | Collection due process request received timely   |          | 02-06-2012 | \$0.00       |
| 520  | Bankruptcy or other legal action filed   |          | 02-06-2012 | \$0.00       |
| 300  | Additional tax assessed by examination   | 20121105 | 03-26-2012 | \$0.00       |
| n/a  | 19247-461-08021-2  |          |            |              |
| 421  | Closed examination of tax return   |          | 03-26-2012 | \$0.00       |
| 582  | Lien placed on assets due to balance owed  |          | 08-15-2014 | \$0.00       |
| 360  | Fees and other expenses for collection   |          | 09-08-2014 | \$50.00      |
| 971  | Issued notice of lien filing and right to<br>Collection Due Process hearing                  |          | 08-19-2014 | \$0.00       |

This Product Contains Sensitive Taxpayer Data

|  |   |  |
|--|---|--|
| Form <b>870-LT(AD)</b><br>(Rev. 4/2007)<br>For taxable years ending after August 5, 1997   | Department of the Treasury - Internal Revenue Service<br><b>Settlement Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts and Agreement for Affected Items</b> | IN REPLY REFER TO<br><br>AP:FW:IL:CHI:AN |
| Taxpayer(s) name(s), address, & zip code:<br><br>Abingdon Trading, LLC<br>Attn: John Rodgers, Esq. <i>55 W. Monroe</i><br>131 South Dearborn St, Suite 2400<br>Chicago, IL 60603 | Name of Partnership:<br><br>WACKER MADISON FUND, LLC<br><br>EIN: 36-4456774   | Tax Year(s) Ended:<br><br>200212         |
| SSN/EIN: 36-4480698  | Name of Tax Matters Partner:<br>Jonathan E Kahn, President, KB Trading, Inc.  |  |

**Part I: Offer of Settlement of Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, and Waiver of Restrictions on Assessment for Partnership Items, Penalties, Additions to Tax, and Additional Amounts**

Under the provisions of sections 6224(c) and 7121 of the Internal Revenue Code (IRC), the Commissioner of the Internal Revenue Service and the undersigned taxpayer(s) agree to the determination of partnership items and partnership level determinations as to penalties, additions to tax, and additional amounts that relate to adjustments to partnership items as shown on the attached Schedule of Adjustments.

The undersigned taxpayer(s), in accordance with IRC sections 6224(b) and 6213(d), also waive(s) the restrictions provided in IRC sections 6225(a) and 6213(a) and consent(s) to the assessment and collection of any deficiency attributable to partnership items, penalties, additions to tax, and additional amounts that relate to adjustments to partnership items, as set forth in the attached Schedule of Adjustments (plus any interest provided by law). IRC Section 6651 failure to file penalty applies to any late filed (or non-filed) returns that are required to report the partnership item adjustments.

This is a binding settlement only if you sign this form and return it to us and we sign on behalf of the Commissioner. When we sign the agreement form, the one-year extension of the period of limitations on assessments will begin under IRC section 6229(f). If this is a partial agreement, the period of limitations for assessing any tax attributable to the settled items shall be determined as if this agreement had not been entered into.

If Part I of this agreement form is signed for the Commissioner, the treatment of partnership items and partnership level determinations as to penalties, additions to tax and additional amounts that relate to adjustments to partnership items under this agreement will not be reopened in absence of fraud, malfeasance, or misrepresentation of fact. In addition, no claim for an adjustment of partnership items or for a refund or credit based on any change in the treatment of partnership items or partnership level determinations as to penalties, additions to tax, and additional amounts may be filed or prosecuted.

|  |                                 |                               |
|--|---------------------------------|-------------------------------|
| Signature of Taxpayer<br><br><i>Abingdon Trading, LLC</i>  | Date Signed                     | Phone Number                  |
| Signature of Taxpayer:                                     | Date Signed                     | Phone Number                  |
| By (Signature and Title)<br><br><i>John E. Rogers, TmP</i> | Date Signed<br>6-19-08          | Phone Number<br>312-376-1910  |
| For Internal Revenue Use Only                              | Date accepted for Commissioner: | Signature                     |
|  | Office<br>Chicago               | Title<br>Appeals Team Manager |

(See Instructions for Signing Agreement - Page 3)

**Part II: Offer of Settlement of Affected Items and Waiver of Restrictions on Assessment**

Under the provisions of sections 6224(c) and 7121 of the Internal Revenue Code (IRC), the Commissioner of the Internal Revenue Service and the undersigned taxpayer(s) agree to the determination of partner level determinations (affected items) as shown on the attached Schedule of Adjustments.

The undersigned taxpayer(s), in accordance with IRC sections 6224(b) and 6213(d), also waive(s) the restrictions provided in IRC sections 6225(a) and 6213(a) and consent(s) to the assessment and collection of any deficiency attributable to partner level determinations, as set forth in the attached Schedule of Adjustments, plus any interest provided by law.

This is a binding settlement only if you sign this form, return it to us and we sign on behalf of the Commissioner. When we sign the agreement form, the one year extension of the period of limitations on assessment will begin under IRC section 6229(f). If this is a partial agreement, the period of limitations for assessing any tax attributable to the settled items shall be determined as if this agreement had not been entered into.

If Part II of this agreement form is signed for the Commissioner, the treatment under this agreement of the specified affected items and the partner level determinations as to penalties, additions to tax and additional amounts that relate to adjustments to partnership items will not be reopened in absence of fraud, malfeasance, or misrepresentation of fact. In addition, no claim for an adjustment of affected items or partner level determinations as to penalties, additions to tax and additional amounts or for a refund or credit based on any change in the treatment of these affected items or partner level determinations as to penalties, additions to tax and additional amounts may be filed or prosecuted.

This agreement with respect to affected items and partner level determinations as to penalties, additions to tax and additional amounts is not subject to a request for consistent settlement terms pursuant to IRC section 6224(c)(2).

|  |                                 |                               |                     |
|--|---------------------------------|-------------------------------|---------------------|
| Signature of Taxpayer                  |                                 | Date Signed                   | Phone Number        |
| <i>Abingdon Trading, LLC</i>           |                                 |                               |                     |
| Signature of Taxpayer                  |                                 | Date Signed                   | Phone Number        |
|  |                                 |                               |                     |
| By (Signature and title)               |                                 | Date Signed                   | Phone Number        |
| <i>John Rogers, TMR</i>                |                                 | <i>6-19-08</i>                | <i>312-376-1910</i> |
| For<br>Internal<br>Revenue<br>Use Only | Date accepted for Commissioner: | Signature                     |                     |
|  | Office<br>Chicago               | Title<br>Appeals Team Manager |                     |

(See Instructions for Signing Agreement - Page 3)

## INSTRUCTIONS FOR SIGNING FORM 870-LT(AD)

1. Sign Part I (Offer of Settlement of Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts and Waiver of Restrictions on Assessment for Partnership Items, Penalties, Additions to Tax, and Additional Amounts) of Form 870-LT(AD) to settle the partnership items and partnership level determinations as to penalties, additions to tax, and additional amounts, if any, as shown on the attached Schedule of Adjustments.

2. Sign Part II (Offer of Settlement of Affected Items and Waiver of Restrictions on Assessment) of Form 870-LT(AD) to settle the items that require partner level determinations (affected items, including penalties, additions to tax, and additional amounts, if any). These items are also shown on the attached Schedule of Adjustments.

If you sign Part I, but don't sign Part II, we will mail you one of the following:

- An affected item report, including penalties, additions to tax, and additional amounts, if any, showing the adjustments to your return. You can agree to the affected items at that time or request further Appeals consideration. The report will explain how to do this.
- A notice of deficiency for the affected items other than penalties, additions to tax, and additional amounts. The notice will tell you how to file a petition with the United States Tax Court to dispute the deficiency attributable to the affected items other than penalties, additions to tax, and additional amounts. Penalties, additions to tax, and additional amounts, if any, will be assessed. You must then pay the tax and penalties before you may file a claim for refund to raise any partner level defenses per IRC section 6230(c)(1).

The execution and filing of this offer will expedite the adjustment of tax liability.

3. Your agreement to the corrected partnership items in Part I of Form 870-LT(AD) will remain in effect, whether or not you sign Part II of this form.

4. If a JOINT RETURN OF A HUSBAND AND WIFE was filed and both spouses intend to agree, both spouses should sign Form 870-LT(AD). One spouse may sign as agent for the other if acting under a power of attorney, which, if not previously filed, must accompany this form. The IRS may accept the signature of only one spouse at its discretion. However, the agreement will only be binding on the signing spouse.

5. If the taxpayer is a corporation, the agreement must be signed with the corporate name followed by the signature and title of the officer authorized to sign Form 870-LT(AD).

6. Your attorney or agent may sign either part of the form for you if this action is specifically authorized by a power of attorney, which if not previously filed, must accompany this form.

7. If this offer is signed by a trust, the agreement must be signed with the trust name, followed by the signature and title of the person authorized to sign on behalf of the trust.

8. For a partner who is a member of a consolidated group and the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning before June 28, 2002, the agreement should be signed by a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for the relevant consolidated return year(s). The common parent corporation signs the agreement in its own name. The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should be displayed in the signature block. See Treas. Reg. § 1.1502-77A(e). However, if the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning on or after June 28, 2002, then a currently authorized officer of the subsidiary corporation should sign the agreement and should do so in the name of the subsidiary corporation. See Treas. Reg. § 1.1502-77(a)(6)(iii). The signature and title of a current officer of the subsidiary corporation, who is authorized to bind the corporation, should be displayed in the signature block.

For a partner who is the common parent corporation of a consolidated group and the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning before, on or after June 28, 2002, a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for such consolidated return year(s) should sign the agreement in the name of the common parent corporation. See Treas. Reg. § 1.1502-77(a).

9. If the Tax Matters Partner signs this offer, please include the title with the signature.

10. If the Tax Matters Partner is a subsidiary corporation in a consolidated group and the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning before June 28, 2002, then a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for such consolidated return year should sign the agreement on behalf of the Tax Matters Partner. The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should be displayed in the signature block. See Treas. Reg. § 1.1502-77A(e). An authorized officer for the subsidiary corporation should also sign if it, as the Tax Matters Partner, is binding non-notice partners under the agreement. However, if the agreement is for partnership year(s) ending on or before the last day of a consolidated return year beginning on or after June 28, 2002, then a currently authorized officer of the subsidiary corporation should sign the agreement in the name of the subsidiary corporation. See Treas. Reg. § 1.1502-77(a)(3)(v).

NOTE: The submission of this offer by you and the acceptance of the offer for the Commissioner may result in an additional tax liability to you plus interest as provided by law. If the result is a decrease in tax, the amount of the decrease will be sent to you with interest as provided by law.

Department of the Treasury - Internal Revenue Service  
**Settlement Agreement For Partnership Items and Partnership Level  
 Determinations as to Penalties, Additions to Tax and Additional  
 Amounts, and Agreement for Affected Items**

**SCHEDULE OF ADJUSTMENTS**

| Name of Partnership<br><b>WACKER MADISON FUND, LLC</b><br>EIN: <b>36-4456774</b> | Tax Year(s) Ended      |  |  |
|--|------------------------|--|--|
|  | 200212                 |  |  |
| Detail of Adjustments to Ordinary Income   |                        |  |  |
| Net Gain (Loss) From Form 4797, Part II  | \$16,260,883.00        |  |  |
|  |                        |  |  |
|  |                        |  |  |
|  |                        |  |  |
|  |                        |  |  |
|  |                        |  |  |
|  |                        |  |  |
|  |                        |  |  |
|  |                        |  |  |
| <b>Total Adjustments to Ordinary Income</b>                                      | <b>\$16,260,883.00</b> |  |  |
| <b>Other Adjustments</b>   |                        |  |  |
| <b>A. Portfolio Income (Loss) Interest</b>                                       |                        |  |  |
| (1) Adjustment   | \$0.00                 |  |  |
| (2) As Reported  | \$21,098.00            |  |  |
| (3) Corrected  | \$21,098.00            |  |  |
| <b>B. Portfolio Income (Loss) Dividends</b>                                      |                        |  |  |
| (1) Adjustment   | \$0.00                 |  |  |
| (2) As Reported  | \$26,238.00            |  |  |
| (3) Corrected  | \$26,238.00            |  |  |

Remarks:  
 See attached Form 886A.

**Form 870-LT(AD), Other Adjustments (Continued)**

| NAME OF PARTNERSHIP<br>WACKER MADISON FUND, LLC<br>EIN: 36-4456774 | TAX YEAR(S) ENDED |  |  |
|--|-------------------|--|--|
|  | 200212            |  |  |
| <b>C. Portfolio Income (Loss) Net Short-Term Gain (Loss)</b>       |                   |  |  |
| (1) ADJUSTMENT   | \$123,313.00      |  |  |
| (2) AS REPORTED  | (\$184,418.00)    |  |  |
| (3) CORRECTED  | (\$41,105.00)     |  |  |
| <b>D. Interest Expense on Investment Debts</b>                     |                   |  |  |
| (1) ADJUSTMENT   | \$0.00            |  |  |
| (2) AS REPORTED  | \$14,645.00       |  |  |
| (3) CORRECTED  | \$14,645.00       |  |  |
| <b>E. Investment Income Included in Portfolio Income</b>           |                   |  |  |
| (1) ADJUSTMENT   | \$0.00            |  |  |
| (2) AS REPORTED  | \$47,338.00       |  |  |
| (3) CORRECTED  | \$47,338.00       |  |  |
| <b>F.</b>  |                   |  |  |
| (1) ADJUSTMENT   |                   |  |  |
| (2) AS REPORTED  |                   |  |  |
| (3) CORRECTED  |                   |  |  |
| <b>G.</b>  |                   |  |  |
| (1) ADJUSTMENT   |                   |  |  |
| (2) AS REPORTED  |                   |  |  |
| (3) CORRECTED  |                   |  |  |
| <b>H.</b>  |                   |  |  |
| (1) ADJUSTMENT   |                   |  |  |
| (2) AS REPORTED  |                   |  |  |
| (3) CORRECTED  |                   |  |  |
| <b>I.</b>  |                   |  |  |
| (1) ADJUSTMENT   |                   |  |  |
| (2) AS REPORTED  |                   |  |  |
| (3) CORRECTED  |                   |  |  |

|  |                      |                                 |
|--|----------------------|---------------------------------|
| FORM 888-A                                   | EXPLANATION OF ITEMS | SCHEDULE NUMBER                 |
| NAME OF TAXPAYER<br>WACKER MADISON FUND, LLC |                      | YEAR/PERIOD ENDED<br>12/31/2002 |

Net Gain (Loss) From Form 4797, Part II

|                                    |                   |
|------------------------------------|-------------------|
|                                    | <u>2002</u>       |
| Adjustment Per RAR                 | 21,881,177        |
| Amount Allowed By Government (25%) | 5,420,284         |
| Revised Adjustment                 | <u>16,260,883</u> |

Other Adjustments-Portfolio Income (Loss)

|  |                |
|--|----------------|
| Adjustment Per RAR                     | 184,418        |
| Adjustment Allowed By Government (25%) | 41,105         |
| Revised Adjustment                     | <u>123,313</u> |

Accuracy-Related Penalty

It is determined that the gross valuation misstatement penalty, provided by IRC section 6662, applies at the investor level.

It is further determined that the rate of the accuracy-related penalty is reduced to 10 percent of the deficiency arising from the partnership adjustment(s).

Other Items

There is no cancellation of indebtedness income upon the refinancing transaction.

The pass through deduction for the management fees paid is not subject to the 2% itemized deduction per IRC Section 67 ( c ).

The investors are entitled to the suspension of interest under IRC Section 8404 (g).

Department of the Treasury  
Internal Revenue Service  
PO Box 630  
Holtsville NY 11742

Mail Stop:  
633-4  
Person to Contact:  
Kim Lobalsamo

Date: May 27, 2011

John E & Frances L Rogers  
162 Abingdon Ave  
Kenilworth IL 60043-1202

PC 0013 EGC 5823  
Employee Identification Number:  
0178338012  
Telephone Number:  
631-447-4382  
Hours:  
5:00PM - 11:00PM  
Time Zone:  
EST  
Day(s) of the Week:  
Monday - Friday  
Taxpayer Identification Number:  
-8778  
Tax Year Ended:  
December 31, 2002

Dear John E & Frances L Rogers:

Enclosed is Form 4549-A explaining how the adjustments made during our examination of the above return affect your individual income tax return. The Form 4549-A does not require any signatures and should not be returned to us, but should be kept for your records.

If you owe additional tax, you will receive a bill for the additional tax and interest. If penalties are applicable because of the adjustments made during our examination, a separate report will be mailed to you. If you are due a refund, it will be sent to you within 6 to 8 weeks.

If you have any questions about this matter, please write to the person whose name is shown at the top of this letter, or you may call that person at the telephone number shown.

If you prefer, you may call the IRS telephone number listed in your local directory. An employee there may be able to help you, but the office at the address shown on this letter is most familiar with your case.

If you write to us, please provide your telephone number and the most convenient time for us to call you in case we need more information. Attach this letter to any correspondence to help us identify your case. Keep the copy for your records.

Thank you for your cooperation.

Sincerely yours,

*Patricia J. DeMaio*

Patricia J DeMaio  
Exam Field Support Operation Manager

Enclosure:  
Form 4549-A  
Copy of this letter

Letter 2083 (SC) (Rev. 3-1986)  
Catalog Number 63342P

Name and Address of Taxpayer

John E & Frances L Rogers  
162 Abingdon Ave  
Kenilworth IL 60043-1202

Taxpayer Identification Number  
- 8779

Return Form No.:  
1040

Person with whom  
examination  
changes were  
discussed.

Name and Title:

| 1. Adjustments to Income   |                        | Period End<br>12/31/2002 | Period End | Period End |
|--|------------------------|--------------------------|------------|------------|
| a.   | Interest Income        | (384.00)                 |            |            |
| b.   | Ordinary income (loss) | 1,210,074.00             |            |            |
| c.   | Itemized Deductions    | 41,649.00                |            |            |
| d.   | Exemptions             | 6,000.00                 |            |            |
| e.   |                        |                          |            |            |
| f.   |                        |                          |            |            |
| g.   |                        |                          |            |            |
| h.   |                        |                          |            |            |
| i.   |                        |                          |            |            |
| j.   |                        |                          |            |            |
| k.   |                        |                          |            |            |
| l.   |                        |                          |            |            |
| m.   |                        |                          |            |            |
| n.   |                        |                          |            |            |
| o.   |                        |                          |            |            |
| p.   |                        |                          |            |            |
| <b>2. Total Adjustments</b>  |                        | <b>1,257,339.00</b>      |            |            |
| <b>3. Taxable Income Per Return or as Previously Adjusted</b>  |                        | <b>(134,058.00)</b>      |            |            |
| <b>4. Corrected Taxable Income</b>   |                        | <b>1,123,281.00</b>      |            |            |
| Tax Method   |                        | SCHEDULE D               |            |            |
| Filing Status  |                        | Joint                    |            |            |
| <b>5. Tax</b>  |                        | <b>356,006.00</b>        |            |            |
| <b>6. Additional Taxes / Alternative Minimum</b>   |                        |                          |            |            |
| <b>7. Corrected Tax Liability</b>  |                        | <b>356,006.00</b>        |            |            |
| <b>8. Less</b>   |                        |                          |            |            |
| Credits a.   |                        |                          |            |            |
| b.   |                        |                          |            |            |
| c.   |                        |                          |            |            |
| d.   |                        |                          |            |            |
| <b>9. Balance (Line 7 less total of Lines 8a thru 8d)</b>  |                        | <b>356,006.00</b>        |            |            |
| <b>10. Plus</b>  |                        |                          |            |            |
| Other a. Self Employment Tax   |                        | 5,061.00                 |            |            |
| b.   |                        |                          |            |            |
| Taxes c.   |                        |                          |            |            |
| d.   |                        |                          |            |            |
| <b>11. Total Corrected Tax Liability (Line 9 plus Lines 10a thru 10d)</b>  |                        | <b>361,067.00</b>        |            |            |
| <b>12. Total Tax Shown on Return or as Previously Adjusted</b>   |                        | <b>5,061.00</b>          |            |            |
| <b>13. Adjustments to:</b>   |                        |                          |            |            |
| a.   |                        |                          |            |            |
| b.   |                        |                          |            |            |
| c.   |                        |                          |            |            |
| <b>14. Deficiency-Increase in Tax or (Overassessment - Decrease in Tax)<br/>(Line 11 less Line 12 adjusted by Lines 13a through 13c)</b> |                        | <b>356,006.00</b>        |            |            |
| <b>15. Adjustments to Prepayment Credits-Increase (Decrease)</b>   |                        |                          |            |            |
| <b>16. Balance Due or (Overpayment) - (Line 14 adjusted by Line 15)<br/>(Excluding Interest and penalties)</b>                           |                        | <b>356,006.00</b>        |            |            |

|   |  |                           |
|---|--|---------------------------|
| <b>Form 4549-A</b><br>(Rev. May 2008)         | Department of the Treasury-Internal Revenue Service<br><b>Income Tax Discrepancy Adjustments</b> | Page <u>2</u> of <u>2</u> |
| Name of Taxpayer<br>John E & Frances L Rogers | Taxpayer Identification Number<br>- 8779   | Return Form No.:<br>1040  |

| 17. Penalties/ Code Sections   | Period End<br>12/31/2002 | Period End | Period End |
|--|--------------------------|------------|------------|
| a. Accuracy-IRC 6662   | 35,600.60                |            |            |
| b.   |                          |            |            |
| c.   |                          |            |            |
| d.   |                          |            |            |
| e.   |                          |            |            |
| f.   |                          |            |            |
| g.   |                          |            |            |
| h.   |                          |            |            |
| i.   |                          |            |            |
| j.   |                          |            |            |
| k.   |                          |            |            |
| l.   |                          |            |            |
| m.   |                          |            |            |
| n.   |                          |            |            |
| <b>18. Total Penalties</b>   | <b>35,600.60</b>         |            |            |
| Underpayment attributable to negligence: (1981-1987)<br>A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed. |                          |            |            |
| Underpayment attributable to fraud: (1981-1987)<br>A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.      |                          |            |            |
| Underpayment attributable to Tax Motivated Transactions (TMT).<br>Interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC 6621(c).    | 0.00                     |            |            |
| <b>19. Summary of Taxes, Penalties and Interest:</b>   |                          |            |            |
| a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)  | 356,006.00               |            |            |
| b. Penalties (Line 18) - computed to 05/25/2011  | 35,600.60                |            |            |
| c. Interest (IRC § 6601) - computed to 06/24/2011  | 0.00                     |            |            |
| d. TMT Interest - computed to 06/24/2011 (on TMT underpayment)   | 0.00                     |            |            |
| e. Amount due or refund - (sum of Lines a, b, c and d)   | 391,606.60               |            |            |

**Other Information:**  
 IRC 6662 Accuracy Penalty Gross Valuation Misstatement at 10% applies.  
 If you require further information please contact your Tax Matters Partner.

|   |                            |                       |                     |
|---|----------------------------|-----------------------|---------------------|
| Examiner's Signature:<br>Name<br>K. Lobalsamo | Employee ID:<br>0178338012 | Office:<br>Brookhaven | Date:<br>05/25/2011 |
|---|----------------------------|-----------------------|---------------------|

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.

You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income you earned and do not pay the required tax. The IRS may order backup withholding (withholding of a percentage of your dividend and/or interest payments) if the tax remains unpaid after it has been assessed and four notices have been issued to you over a 120-day period.

|                        |                           |                |
|------------------------|---------------------------|----------------|
| Name of Taxpayer       | John E & Frances L Rogers | 05/25/2011     |
| Identification Number: | -8779                     | Total 12.00.00 |

---

**2002 - Form 6251 - Alternative Minimum Tax Computation**

|  |              |
|--|--------------|
| 1. If filing Schedule A enter tax table income, otherwise adjusted gross income  | 1,123,281.00 |
| 2. Total adjustment and preferences  | (15,318.00)  |
| 3. Net operating loss deduction  | 0.00         |
| 4. Alternative tax net operating loss deduction  | 0.00         |
| 5. Alternative minimum taxable income (combine lines 1 thru 4)   | 1,107,963.00 |
| 6. Exemption amount  | 0.00         |
| 7. Subtract line 6 from line 5 ( if 0 or less, enter 0)  | 1,107,963.00 |
| 8. If capital gains are reported, see line 22 from page 2  | 285,938.00   |
| All others:  |              |
| If line 7 is \$175,000 or less (\$87,500 if MFS) multiply line 7 by 26%. Otherwise, multiply line 7 by 28% and subtract \$3,500 (\$1,750 if MFS) from result |              |
| 9. Alternative minimum tax foreign tax credit  | 0.00         |
| 10. Tentative minimum tax. Subtract line 9 from line 8   | 285,938.00   |
| 11. Regular tax before credits   | 356,006.00   |
| 12. Alternative minimum tax  | 0.00         |

**Exemption Worksheet (Line 6)**

|   |              |
|---|--------------|
| A. Exemption amount based on filing status  | 49,000.00    |
| B. Alternative minimum taxable income   | 1,107,963.00 |
| C. Enter \$112,500 (\$150,000 if married filing jointly or qualifying widow(er), \$75,000 if married filing separate) | 150,000.00   |
| D. Subtract line C from Line B  | 957,963.00   |
| E. Multiply line D by 25%   | 239,491.00   |
| F. Subtract line E from line A (if zero or less, enter 0)   | 0.00         |

Name of Taxpayer: John E & Frances L Rogers  
Identification Number: -8779

05/25/2011  
12.00.00

Total

2002 - Form 6251 - Continuation, using Maximum Capital Gain Rates,  
Computation of Line 10 when Schedule D is completed

|  |              |
|--|--------------|
| 1. Amount from Form 6251 report, line 9  | 1,107,963.00 |
| 2. Amount from Schedule D line 18, or line 9 from worksheet (refigured for AMT)  | 259,891.00   |
| 3. Amount from Schedule D report, line 14 (refigured for AMT)  | 0.00         |
| 4. Amount from line 2 if no Schedule D worksheet otherwise,<br>the smaller of the sum of 2 or 3 or Schedule D worksheet line 4.  | 259,891.00   |
| 5. Smaller of line 1 or line 4   | 259,891.00   |
| 6. Subtract line 5 from line 1   | 848,072.00   |
| 7. If line 6 is \$175,000 or less (\$87,500 if MFS) multiply<br>line 6 by 26%. Otherwise, multiply line 6 by 28% and<br>subtract \$3,500 (\$1,750 if MFS) from result  | 233,960.00   |
| 8. Amount from Schedule D report, line 23 (refigured for AMT)  | 0.00         |
| 9. Smallest of line 1 or line 2  | 259,891.00   |
| 10. Smallest of line 8 or line 9 (not less than zero)  | 0.00         |
| 11. Qualified 5-year gain from Schedule D report, line 24 (refigured for AMT)  | 0.00         |
| 12. Smaller of line 10 or line 11  | 0.00         |
| 13. Multiply line 12 by 8%   | 0.00         |
| 14. Subtract line 12 from line 10  | 0.00         |
| 15. Multiply line 14 by 10%  | 0.00         |
| 16. Subtract line 10 from line 9   | 259,891.00   |
| 17. Multiply line 16 by 20%  | 51,978.00    |
| 18. Subtract line 9 from line 5  | 0.00         |
| 19. Multiply line 18 by 25%  | 0.00         |
| 20. Total of lines 7, 13, 15, 17, and 19   | 285,938.00   |
| 21. If line 1 is \$175,000 or less (\$87,500 if MFS) multiply<br>line 1 by 26%. Otherwise, multiply line 1 by 28% and<br>subtract \$3,500 (\$1,750 if MFS) from result | 306,730.00   |
| 22. Smaller of line 20 or 21, enter here and on<br>line 10 of Form 6251 report   | 285,938.00   |

|                        |                           |                |
|------------------------|---------------------------|----------------|
| Name Of Taxpayer:      | John E & Frances L Rogers | 05/25/2011     |
| Identification Number: | 1-8779                    | Total 12.00.00 |

---

2002 - PERSONAL EXEMPTION WORKSHEET

|   |              |
|---|--------------|
| 1. Multiply \$ 3,000.00 by the total number of exemptions claimed on Form 1040, line 6e | 6,000.00     |
| 2. Adjusted Gross Income  | 1,184,185.00 |
| 3. Limitation based on Filing Status  | 206,000.00   |
| 4. Subtract line 3 from line 2  | 978,185.00   |
| 5. Divide line 4 by \$2,500 (\$1,250 if married filing separate)                        | 0.00         |
| 6. Multiply line 5 by 2% and enter the result as a decimal                              | 0.00         |
| 7. Multiply line 1 by line 6  | 0.00         |
| 8. Deduction for exemptions (Subtract line 7 from line 1)                               | 0.00         |

Note: If Line 4 is more than \$122,500. or (\$61,250. if married filing separately), a deduction for exemptions cannot be taken.

Taxpayer: John F. & Frances L. Rogers  
 TIN: -8779

Page of  
 Tax Period(s): 200212

### Accuracy-Related Penalties under IRC 6662

#### 20 Percent Penalty – Internal Revenue Code Section 6662(a)

It has been determined that the underpayment of tax shown on line 7 below is attributable to one or more of the following:

- (1) Negligence or disregard of rules or regulations;
- (2) Substantial understatement of income tax;
- (3) Substantial valuation misstatement (overstatement).

Therefore, an addition to tax is imposed as provided by Section 6662(a) of the Internal Revenue Code.

|   |            |
|---|------------|
| 1. Total Underpayment   | 356,006.00 |
| 2. Less: Underpayment attributable to non-penalty issues  | 0.00       |
| 3. Less: Underpayment attributable to Section 6662A penalty issues                                | 0.00       |
| 4. Less: Underpayment attributable to Section 6662(h) penalty issues                              | 0.00       |
| 5. Less: Underpayment attributable to civil fraud penalty issues                                  | 0.00       |
| 6. Less: Allocable prepayment credits   | 0.00       |
| 7. Underpayment to which Section 6662(a) applies (Line 1 less the sum of lines 2, 3, 4, 5, and 6) | 356,006.00 |
| 8. Applicable penalty rate  | 10.00%     |
| 9. Section 6662(a) accuracy-related penalty (Line 7 times line 8)                                 | 35,600.60  |
| 10. Less: Previously assessed/previously agreed Section 6662(a) accuracy-related penalty          | 0.00       |
| 11. Total section 6662(a) accuracy-related penalty (Line 9 less line 10)                          | 35,600.60  |

#### 40 Percent Penalty – Internal Revenue Code Section 6662(h)

It has been determined that the underpayment of tax shown on line 7 below is attributable to a gross valuation misstatement (overstatement). Therefore, an addition to tax is imposed as provided by Section 6662(h) of the Internal Revenue Code.

|   |            |
|---|------------|
| 1. Total Underpayment   | 356,006.00 |
| 2. Less: Underpayment attributable to non-penalty issues  | 0.00       |
| 3. Less: Underpayment attributable to Section 6662A penalty issues                                | 0.00       |
| 4. Less: Underpayment attributable to Section 6662(a) penalty issues                              | 356,006.00 |
| 5. Less: Underpayment attributable to civil fraud penalty issues                                  | 0.00       |
| 6. Less: Allocable prepayment credits   | 0.00       |
| 7. Underpayment to which Section 6662(h) applies (Line 1 less the sum of lines 2, 3, 4, 5, and 6) | 0.00       |
| 8. Applicable penalty rate  | 40.00%     |
| 9. Section 6662(h) accuracy-related penalty (Line 7 times line 8)                                 | 0.00       |
| 10. Less: Previously assessed/previously agreed Section 6662(h) accuracy-related penalty          | 0.00       |
| 11. Total section 6662(h) accuracy-related penalty (Line 9 less line 10)                          | 0.00       |

Name Of Taxpayer: John E & Frances L Rogers 05/25/2011  
Identification Number: -8779 Total 12.00.00

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**2002 - Adjustments Subject to Accuracy-Related Penalty - IRC 6662**

ADJUSTMENTS TO WHICH THE ACCURACY RELATED PENALTY APPLIES:  
PENALTY RATES  
10% 40%

|                        |   |              |             |
|------------------------|---|--------------|-------------|
| Ordinary income (loss) | X | 1,210,074.00 | IRC 6662(e) |
|------------------------|---|--------------|-------------|

Name Of Taxpayer: John F & Frances L Rogers  
 Identification Number: -8779

Total

05/25/2011  
 12.00.00

2002 - SCHEDULE A - ITEMIZED DEDUCTIONS

|  | PER RETURN | PER EXAM  | ADJUSTMENT |
|--|------------|-----------|------------|
| 1. Medical, dental and insurance premiums  | 8,439.00   | 8,439.00  | 0.00       |
| 2. 7.50% of Adjusted Gross Income  | 0.00       | 88,814.00 |            |
| 3. Net Medical and Dental Expense  | 8,439.00   | 0.00      | 8,439.00   |
| 4. Taxes   | 18,643.00  | 18,643.00 | 0.00       |
| 5. Home Interest Expense   | 28,594.00  | 28,594.00 | 0.00       |
| 6. Investment Interest   | 45,074.00  | 45,074.00 | 0.00       |
| 7. Other Interest Expense  | 0.00       | 0.00      | 0.00       |
| 8. Total Interest Expense  | 73,668.00  | 73,668.00 | 0.00       |
| 9. Contributions   | 0.00       | 0.00      | 0.00       |
| 10. Casualty and theft Losses  | 0.00       | 0.00      | 0.00       |
| 11. Miscellaneous deductions subject to AGI limit  | 1,803.00   | 1,803.00  | 0.00       |
| 12. 2.00% of Adjusted Gross Income   | 0.00       | 23,684.00 |            |
| 13. Excess Miscellaneous deductions  | 1,803.00   | 0.00      | 1,803.00   |
| 14. Other Miscellaneous deductions   | 0.00       | 0.00      | 0.00       |
| 15. Total itemized deductions (Sum of Lines 3, 4, 8, 9, 10, 13, and 14 less any applicable limitation) | 102,553.00 | 60,904.00 | 41,649.00  |

ITEMIZED DEDUCTIONS WORKSHEET - PER EXAM

|  |              |
|--|--------------|
| A. Total of lines 3, 4, 8, 9, 10, 13, and 14                               | 92,311.00    |
| B. Total of lines 3, 6, 10, (plus any gambling losses included on line 14) | 45,074.00    |
| C. Line A less Line B  | 47,237.00    |
| D. Multiply the amount on line C by 80%                                    | 37,790.00    |
| E. Adjusted Gross Income from Form 1040                                    | 1,184,185.00 |
| F. Itemized Deduction Limitation   | 137,300.00   |
| G. Line E less Line F  | 1,046,885.00 |
| H. Multiply the amount on Line G by 3%                                     | 31,407.00    |
| I. Enter the smaller of Line D or Line H                                   | 31,407.00    |
| J. Total Itemized Deductions (entered on line 15 above)                    | 60,904.00    |

Name of Taxpayer: John E & Frances L Rogers  
Identification Number: -8779

05/25/2011  
Total 12.00.00

2002 - SCHEDULE D - CAPITAL GAINS AND LOSSES

|  |            |
|--|------------|
| 1. Short-term capital gain or loss                 | 3,609.00   |
| 2. Short-term capital loss carryover               | 0.00       |
| 3. Net Short-term Gain or Loss (Add line 1 and 2)  | 3,609.00   |
| 4. Long-term capital gain or loss                  | 259,891.00 |
| 5. Long-term capital gain or loss carryover        | 0.00       |
| 6. Net long-term Gain or Loss (Add line 4 and 5)   | 259,891.00 |
| 7. Sum of lines 3 and 6 - Net Capital Gain or Loss | 263,500.00 |
| 8. Capital loss limitation                         | 0.00       |
| 9. Capital Gain or Loss - As Corrected             | 263,500.00 |
| 10. Capital Gain or Loss - Per Return              | 263,500.00 |
| 11. Line 9 less line 10 - Adjustment to Income     | 0.00       |

CORRECTED CARRYOVER

|   |      |
|---|------|
| 12. Short-term Carryover to Subsequent Year | 0.00 |
| 13. Long-term Carryover to Subsequent Year  | 0.00 |

COMPUTATION OF ALTERNATIVE TAX

|  |              |
|--|--------------|
| 14. Unrecaptured 1250 gain                           | 0.00         |
| 15. Taxable Income                                   | 1,123,281.00 |
| 16. Smaller of line 6 or line 7                      | 259,891.00   |
| 17. Form 4952, line 4e                               | 0.00         |
| 18. Subtract line 17 from line 16 (not less than 0)  | 259,891.00   |
| 19. Subtract line 18 from line 15 (not less than 0)  | 863,390.00   |
| 20. Tax on the amount on line 19                     | 304,028.00   |
| 21. Smaller of line 15 or 46,700.00                  | 46,700.00    |
| 22. Amount from line 19                              | 863,390.00   |
| 23. Subtract line 22 from line 21 (not less than 0)  | 0.00         |
| 24. Qualified 5-year gain                            | 0.00         |
| 25. Smaller of line 23 or line 24                    | 0.00         |
| 26. Multiply line 25 by 8%                           | 0.00         |
| 27. Subtract line 25 from line 23                    | 0.00         |
| 28. Multiply line 27 by 10%                          | 0.00         |
| 29. Smaller of line 15 or line 18                    | 259,891.00   |
| 30. Amount from line 23                              | 0.00         |
| 31. Subtract line 30 from line 29 (not less than 0)  | 259,891.00   |
| 32. Multiply line 31 by 20%                          | 51,978.00    |
| 33. Alternative Tax, sum of lines 20, 26, 28, and 32 | 356,006.00   |

|  |                                |                   |                            |
|--|--------------------------------|-------------------|----------------------------|
| Form <b>886-A</b><br>(Rev. January<br>1994)886-A | <b>EXPLANATION OF ITEMS</b>    |                   | Schedule number or exhibit |
| Name of Taxpayer                                 | Taxpayer Identification Number | Year/Period Ended |                            |
| John E & Frances L Rogers                        | -8779                          | 2002              |                            |

**Interest Income**

| Tax Period | Per Return | Per Exam | Adjustment |
|------------|------------|----------|------------|
| 2002       | \$384.00   | \$0.00   | (\$384.00) |

We have adjusted your return in accordance with the examination results for Abingdon Trading, LLC. The examination results are based on the settlement agreement, Form 870-LT and the Schedule of Adjusted Items.

**Ordinary income (loss)**

| Tax Period | Per Return     | Per Exam     | Adjustment     |
|------------|----------------|--------------|----------------|
| 2002       | (\$495,285.00) | \$714,789.00 | \$1,210,074.00 |

We have adjusted your return in accordance with the examination results for Abingdon Trading, LLC/36-4480698. The examination results are based on the settlement agreement, Form 870-LT and the Schedule of Adjusted Items.

**Statutory-Itemized Deductions**

| Tax Period | Per Return   | Per Exam    | Adjustment  |
|------------|--------------|-------------|-------------|
| 2002       | \$102,553.00 | \$60,904.00 | \$41,649.00 |

Only the amount of medical expenses that exceeds a certain percentage of your adjusted gross income is deductible. Since your adjusted gross income has been changed, we have adjusted your medical expense deduction as shown in the accompanying computation.

Certain expenses deducted as miscellaneous itemized deductions are only deductible to the extent that they exceed a percentage of your adjusted gross income. Since we have made other changes in this report which affect your adjusted gross income, we have also adjusted these expenses.

# Notice of Audit Initiation

## Income Tax



#BWNKMGV  
#CNXX X15X 3539 2965#  
JOHN E. ROGERS  
162 ABINGDON AVE  
KENILWORTH IL 60043-1202

March 25, 2013



Letter ID: CNXXX15X35392965

**Taxpayer ID:** XXX-XX-8779  
**Account ID:** P13920903  
**Audit ID:** A1968861184  
**Return type:** IL-1040  
**Audit periods:** 01/2002 - 12/2002



This letter serves to notify you effective March 25, 2013, that an audit has been initiated on your IL Individual Income Tax for your account ID and periods shown above. As part of the audit process, we will perform compliance reviews for all other Illinois taxes administered by the Illinois Department of Revenue.

We received information from the Internal Revenue Service (IRS), as authorized under the Internal Revenue Code Section 6103(d), which indicates that a federal tax audit was completed on you, your business, trust, or estate. You are required to report those adjustments that affect Illinois income to the department (see Illinois Income Tax Act, Section 506(b)). If you are required to file, you may send us the required tax return(s).

If you are a partnership, S corporation, or trust, this also constitutes the initiation of an audit on your partners, shareholders, or beneficiaries regarding the amount of underpayment or overpayment that results from changes to your return that flow through to their returns.

The following books and records are needed to start the examination:

- federal income tax returns, including RARs, amended returns, etc., for each tax year
- Amended 2002 IL-1040

PLEASE RESPOND BY APRIL 15, 2013

Additional records and documentation may be requested as the examination proceeds.

Liabilities for periods whose returns are due on or after January 1, 2005, that were not paid prior to the audit initiation date, as shown above, will have a late payment penalty imposed of 15 percent. After the conclusion of this audit, if any liability is not paid within 30 days of the date of the issuance of Form IL-870, Waiver of Restrictions, this penalty will increase to 20 percent. Liabilities due as a result of a timely filed report of a federal change are not subject to this penalty.

For unpaid liabilities due prior to July 1, 2009, and which were eligible for amnesty under the Tax Delinquency Amnesty Act, penalty and interest imposed on the liability will generally be doubled.

We are enclosing, PIO-60, Illinois Audit Information, which explains general audit procedures and methods.

If you have any additional questions, please contact me using the information listed below.

Sincerely,

Greg Nelson  
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19020  
SPRINGFIELD, IL 62794-9020



**Illinois Department of Revenue**  
101 West Jefferson Street  
Springfield, Illinois 62702

April 26, 2013

John E & Frances L Rogers  
162 Abingdon Ave  
Kenilworth, IL 60043-1202

Re: Non-Filed RAR  
SSN: XXX-XX-8779  
Years: 12/02  
Track: A1968861184

Dear Taxpayer:

On March 25, 2013 you were notified by letter of the above-referenced Audit. I made a request for information and/or returns to assist me in bringing you into compliance. I have not received either of the requested items.

Please find enclosed work papers reflecting *what you can expect if you further choose not to be part of this process*. Since you did not respond, we used your Adjusted Gross Income (AGI) based on the best information available per IITA, Section 5/201. We obtained information from the Internal Revenue Service under authorization of the Internal Revenue Code, Section 6103(d). No possible credits were given since you didn't respond

**If you do not respond by May 15, 2013, I will move forward in the process of issuing a formal Notice of Deficiency against you.**

Thank you in advance for your cooperation in clearing up this matter. If you have any questions or need further assistance, please do not hesitate to contact me directly.

Sincerely,

Greg Nelson, Revenue Auditor  
Illinois Department Of Revenue  
Income Tax Discovery Section  
PO Box 19020  
Springfield, IL 62794-9020  
217.785.7245

cc: file



|  | As Filed | Net Change | As Corrected |
|--|----------|------------|--------------|
| Total Tax Due (from EDA24 front)   | \$0      |            | \$58,638     |
| Payments and Credits   |          |            |              |
| 17 Illinois Income Taxes Withheld (W-2)  | 2,766    | 0          | 2,766        |
| 18 Estimated Payments (IL-1040-ES, IL-505-I)<br>and Prior Year Overpayment Credits | 0        | 0          | 0            |
| Payment Made With Original Return  | 0        | 0          | 0            |
| Other Payments   | 0        | 0          | 0            |
| 19 Foreign Tax Credit From Schedule CR   | 0        | 0          | 0            |
| 20 Illinois Property Tax Paid: 0   |          |            |              |
| Property Tax Credit for This Year  | 0        | 0          | 0            |
| Qualifying Education Expenses: 0   |          |            |              |
| Education Expense Credit   | 0        | 0          | 0            |
| Federal Earned Income Credit: 0  |          |            |              |
| Illinois Earned Income Credit  | 0        | 0          | 0            |
| 21 Tax Credits From Schedule 1299-C  | 0        | 0          | 0            |
| 22 Total Payments and Credits  | 2,766    | 0          | 2,766        |
| Donations to Voluntary Contributions Funds   | 0        | 0          | 0            |
| 24 Credit Carryforward to Next APE   | 0        | 0          | 0            |
| Amount(s) Refunded   | 2,766    | 0          | 2,766        |
| Refund/Credit Used in Other APE  | 0        | 0          | 0            |
| Payments Applied to Penalty/Interest   | 0        | 0          | 0            |
| Net Payments and Credits   | 0        | 0          | 0            |
| Net Tax Due  | 0        | 58,638     | 58,638       |
| Interest Due on Tax  | 0        | 0          | 0            |
| Penalty:   |          |            |              |
| Late Filing Penalty  | 0        | 0          | 0            |
| Negligence Penalty   | 0        | 0          | 0            |
| Late Payment Penalty for Underpayment of Est. Tax                                  | 0        | 0          | 0            |
| Late Payment Penalty for Unpaid Tax  | 0        | 0          | 0            |
| Less: Penalty Paid   | 0        | 0          | 0            |
| Total Penalty Due  | 0        | 0          | 0            |
| 28 Total Tax and Penalty Due   | \$0      | \$58,638   | \$58,638     |

Date of Report

04/26/2013

Auditor

GREG NELSON

Discussed with

Title

Date

To: Greg Nelson

*Fcf 217-785-3251*

Re: 2002 John & Fran Rogers

05-17-13

Dear Mr. Nelson, attached is an IRS notice of appeals. I have just cleared my plate to deal with them and get the case switched to Chicago.

*John E. Rogers*  
John E. Rogers

**Internal Revenue Service**

Appeals Office  
P.O. Box 24018  
Fresno, CA 93779-4018

Date: March 22, 2012

JOHN E & FRANCES L ROGERS  
162 ABINGDON AVE  
KENILWORTH, IL 60043

**Department of the Treasury****Person to Contact:**

Kimberlee A Linthicum  
Employee ID Number: 0161087  
Tel: 559-456-5753  
Fax: 559-456-5998

**Refer Reply to:**

AP:FW:FRC:KAL

**In Re:**

Collection Due Process - Levy

**Tax Period(s) Ended:**

12/2002

Dear Mr. & Mrs. Rogers:

This letter is our acknowledgement that we received your case for consideration in our Fresno Campus - Butler Appeals Office on March 5, 2012.

In this letter we will explain who we are, what we do, how we do it, who you can talk to, and what you can expect.

**Who We Are, What We Do, and How We Review Cases**

Appeals is separate from - and independent of - the division of the Internal Revenue Service proposing the action. What we do is review and resolve disputes. We do this in a fair and impartial manner by using the law and judicial decisions to weigh the facts. We conduct our reviews by: (1) telephone, (2) mail, and/or (3) personal interviews. If you prefer your hearing to be a face-to-face conference at the Appeals Office closest to your residence/business address, please let us know immediately so your case can be transferred to the appropriate field office for consideration.

**What You Can Expect**

We will make every attempt to contact you as quickly as possible. You can expect the "Person to Contact" listed above to consider the facts in your case and try to resolve the dispute. This person may also ask for additional information to specifically explain or support the information in your file.

If our office determines that you owe the IRS, the law requires a charge for interest until you pay the amount you owe in full. If the amount determined that you owe includes penalties, additional penalty amounts may accrue until you pay in full.

**What You Can Do**

- Respond quickly if asked to send additional information.
- If you wish to stop or reduce interest on part or all of the proposed balance due, you can make payments toward the tax at the address listed above.
- You may be represented by an attorney, certified public accountant, or a person enrolled to practice before the Internal Revenue Service. However, your representative must submit a Form 2848, *Power of Attorney*, or similar written authorization. If you need more information about the requirements for representing taxpayers, you may obtain a copy of Treasury Department Circular 230 available at most IRS offices.
- Communicate with the "Person to Contact" listed above with any questions about the Appeals process or how you can prepare for your hearing.
- Research our website at [www.irs.gov/appeals](http://www.irs.gov/appeals) for more information.



Department of the Treasury  
Internal Revenue Service

PO Box 145566 Stop 814G/CDP  
Cincinnati OH 45201

In reply refer to: 0266343451  
Feb. 24, 2012 LTR 86C EO  
-8779 200212 30

00001935  
BODC: SB

JOHN E & FRANCES L ROGERS  
162 ABINGDON AVE  
KENILWORTH IL 60043



001240

Taxpayer Identification Number: 8779  
Tax Period(s): Dec. 31, 2002  
Form: 1040

Dear Taxpayer:

Thank you for your Form 12153 of Feb. 04, 2012.

Your request for a Collection Due Process Hearing has been forwarded to our Appeals Office in Fresno, CA. Appeals will contact upon receipt of the Form 12153 and furnish you with the name and telephone number of the Settlement Officer assigned to your case. Please be sure to have all pertinent information related to your case available for your hearing.

If you need forms, schedules, or publications, you can obtain them by visiting the IRS website at [www.irs.gov](http://www.irs.gov) or by calling toll-free at 1-800-TAX-FORM (1-800-829-3676).

If you have any questions, please call Ms. Kang at 859-669-5239 between the hours of 6:00 am and 3:00 pm EST.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include a copy of this letter with your response. Use the space below to indicate a telephone number and the best time for us to call you should we need more information. Keep a copy of this letter and any information that you send to us for your records.

Telephone Number ( ) \_\_\_\_\_ Hours \_\_\_\_\_

We apologize for any inconvenience, and thank you for your cooperation.

0266343451  
Feb. 24, 2012 LTR 86C E0  
1-8779 200212 30  
00001936

JOHN E & FRANCES L ROGERS  
162 ABINGDON AVE  
KENILWORTH IL 60043

Sincerely yours,

A handwritten signature in cursive script that reads "Retha Zulager".

Retha Zulager, Department Manager  
ACS Support, Collection Operations



**Illinois Department of Revenue**  
101 West Jefferson Street  
Springfield, Illinois 62702

May 22, 2013

John E & Frances L Rogers  
162 Abingdon Ave  
Kenilworth, IL 60043-1202

Re: EDA-122  
SSN: XXX-XX-8779  
Years: 12/02  
Track: A1968861184

Dear Taxpayer:

We are in receipt of your faxed correspondence on May 20, 2013. It appears that the letter you presented concerns the Collection Due Process-Levy with the Internal Revenue Service. As far as this Department is concerned, the IRS has examined and finalized your return. Per Section 506(b) of the IITA, you are required to report this change to this Department within 120 days of finalization.

With that, please find enclosed an EDA-122, ICB-1 and work papers showing our calculations based on the IRS results. You have 60 days to apply to the Informal Conference Board.

Thank you in advance for your cooperation in clearing up this matter. If you have any questions or need further assistance, please do not hesitate to contact me directly.

Sincerely,

Greg Nelson, Revenue Auditor  
Illinois Department Of Revenue  
Income Tax Discovery Section  
PO Box 19020  
Springfield, IL 62794-9020  
217.785.7245

cc: file

# Notice of Proposed Deficiency



May 24, 2013



Letter ID: L1129748064

JOHN ROGERS  
FRANCES ROGERS  
162 ABINGDON AVE  
KENILWORTH IL 60043-1202

**Taxpayer ID:** XXX-XX-8779  
**Secondary ID:** XXX-XX-7927  
**Account ID:** P13920903  
**Audit ID:** A1968861184  
**Return type:** IL-1040  
**Audit periods:** 01/2002 - 12/2002

We have audited your account and have determined that there is additional liability due.

|         |                   |
|---------|-------------------|
| Tax     | \$58,638.00       |
| Penalty | \$0.00            |
| Total   | <hr/> \$58,638.00 |

Our calculations, periods covered, and other explanations resulting in the determination are attached for your review.

**If you agree** with the figures as shown, please contact the auditor at the telephone number shown below. We will send you Form IL-870, Waiver of Restrictions, showing the same tax and penalty amounts as above. When you receive Form IL-870, you must sign the form and return it to us along with any payment due within 30 days of the "Date of Issuance" shown on Form IL-870. Unless the auditor provides different instructions, mail Form IL-870 and your payment to:

AUDIT PERFECTION SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

Please note, if you sign the IL-870 or pay the amount shown due, you waive the right to seek review by the Informal Conference Board.

**If you do not agree** with the figures shown above, you may request a review of this proposed liability by the Informal Conference Board (Section 2505-510). To do this, you must complete Form ICB-1, Request for Informal Conference Board Review, within 60 days from the date of this notice and mail it along with the auditor's work papers and a copy of this notice to:

INFORMAL CONFERENCE BOARD  
100 W RANDOLPH SUITE 7-341  
CHICAGO IL 60601

If you do not request an ICB review within 60 days from the date of this notice, we will send you a Form IL-870 showing the amount of tax due, plus applicable penalties.

Sincerely,

Greg Nelson  
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19020  
SPRINGFIELD, IL 62794-9020

217 785-7245  
217 785-3251 fax



# ICB-1 Request for Informal Conference Board Review

## Read this information first

By completing and filing this form, you are requesting that the Informal Conference Board (ICB) conduct an informal review to examine the basis for a Notice of Proposed Deficiency, Notice of Proposed Liability, Notice of Proposed Claim Denial, or Notice of Proposed Liability and Claim Denial issued by the Illinois Department of Revenue. If you did not receive one of these notices, **do not file this form.**

**Note: Do not** complete this form if you are requesting a review of an offer in compromise based on an inability to pay an undisputed tax liability. These offers must be made by filing a petition with the Board of Appeals after a final assessment of the tax has been issued.

- ✓ You must complete Steps 1, 3, 4, 5, and 6. Complete Step 2 if someone will represent you during the informal conference process.
- ✓ If you are requesting an in-person conference with the ICB, you must make the request in Step 4.
- ✓ Complete and attach Form ICB-2, Offer of Disposition of a Proposed Assessment or Claim Denial, if you are making an offer of disposition as part of this review request.
- ✓ You must file this request within **60 days** of the date of the Notice of Proposed Deficiency, Notice of Proposed Liability, Notice of Proposed Claim Denial, or Notice of Proposed Liability and Claim Denial. This date is the later of the date appearing on the face of the notice or the postmark date.

## Step 1: Identify yourself, your business, or your organization

1 Taxpayer's name JOHN E & FRANCES L ROGERS

2 Current address 162 ABINGDON AVE  
Street address  
KENILWORTH IL 60043  
City State ZIP

Daytime phone no. ( ) \_\_\_\_\_  
 Fax no. ( ) \_\_\_\_\_

3 Contact person \_\_\_\_\_  
(For business or organization)

Daytime phone no. ( ) \_\_\_\_\_

4 SSN \_\_\_\_\_ - \_\_\_\_\_ - 8779  
Social Security number

5 FEIN \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Federal employer identification number

6 Account ID \_\_\_\_\_

7 License no. \_\_\_\_\_

8 **Corporate income tax audits only:** complete the following information if you filed as a member of a unitary group or the auditor proposed that you should be a member of a unitary group.

a Sch. UB filer name \_\_\_\_\_

b Sch. UB filer FEIN \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

## Step 2: Identify your representative

Complete all the information requested in this step if someone will represent you during the informal conference process.

**Note:** Your representative **must** attach a properly executed Form IL-2848, Power of Attorney.

1 Representative's name \_\_\_\_\_

2 Representative's address \_\_\_\_\_  
Street address  
 \_\_\_\_\_  
City State ZIP

3 Daytime phone no. ( ) \_\_\_\_\_  
 Fax no. ( ) \_\_\_\_\_

4 Check this box if all correspondence should be sent to your representative's address. →

If you checked the box, all correspondence from the ICB will be mailed to this address.

If you did not check the box, all correspondence from the ICB will be mailed to the address provided in Step 1.

## Step 3: Provide the following audit or examination information

**Note:** You must attach a copy of the Notice of Proposed Deficiency, Notice of Proposed Liability, Notice of Proposed Claim Denial, or Notice of Proposed Liability and Claim Denial and any attachments you received from us.

1 Write the audit ID or track number from the notice you received. A1968861184

2 Write the tax type. IL IND INCOME TAX

3 Write the audit period and the amount of the proposed assessment or claim denial.

Audit period: 12/02

Amount: \$58,638.00



## Auditor's Comments

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|                 |                           |                 |             |
|-----------------|---------------------------|-----------------|-------------|
| <b>Subject:</b> | John E Frances L Rogers   | <b>APE:</b>     | 12/02       |
| <b>Address:</b> | 162 Abingdon Ave          | <b>Cmpltd:</b>  | 03/04/14    |
| <b>City:</b>    | Kenilworth, IL 60043-1202 | <b>Track:</b>   | A1968861184 |
| <b>SS/FEIN:</b> | 343-34-8779               | <b>Statute:</b> | 12/31/9998  |
| <b>Phone:</b>   | 312.804.4676              | <b>Contact:</b> | TP          |

---

My audit was conducted without a conflict of interest with the taxpayer or their representatives.

### General Background:

This (primary) Taxpayer has been on the Department's radar since the VCP days, as he was investigated by the IRS for selling the "DAD Transaction", which involved reducing taxable income thru acquired bad debt from locales outside of the United States. He was never criminally charged, but has been permanently barred from promoting the scheme. Like most promoters, he applied the scheme to reduce his personal income.

We previously audited the TP's and closed out the 03 thru 07 tax years due to lack of Federal Adjustment (as of yet). Afterwards, in comparing his earlier Federal AGI to what was reported to Illinois, it appears the IRS did actually adjust his income for the year in question. Per the IRS Transcript, the latest finalization date would be 05/25/11. (12/01 was "no change", 12/07 also indicates a change to AGI, but states that it is in Appeals). The 12/02 increase was never reported to this Department. Per Section 506(b), a TP has 120 days to report such changes.

### Statute:

12/31/9998 (non-reported RAR)

### Power of Attorney:

None

### Discussion of Issues:

An Initiation Letter was sent to the TP's on March 25, 2013. After no response from the TP's, a second letter was sent with work papers on April 26<sup>th</sup>. I received a call from the (primary) TP on May 8<sup>th</sup>, stating that his (12/02) personal case was still in Appeals, as the IRS was awaiting the outcome of "another taxpayer's case". I told him that I needed confirmation of such to put this case on hold, which was finally faxed to me on May 20 after having to remind him on the 14<sup>th</sup>. The response was a copy of IRS confirmation that they'd received his case "for consideration...on March 5, 2012". It appears that the TP is trying to delay this Department's process, as the Appeal concerns the "Collection Due Process-Levy", which means the TP is not contesting the assessment, but the actual Levy or Collection Action.

I called the IRS contact listed on the letter (no information about the TP was disclosed, just discussed the Collection Appeals process in general terms). She informed me that even if the TP was requesting a face to face hearing (getting it moved to the Chicago office, which was mentioned in the TP's cover), their office would have sent him correspondence either way well since March 05, 2012. This distinction is critical. The fact that the TP didn't send me more recent correspondence tells me he is just stonewalling. Per the IRS Agent's comments, he would have had more recent correspondence that would have specifically proven his point, but he chose to send me an "application confirmation".

After receiving approval on May 22, 2013, the TP's were issued an EDA-122, ICB-1 and work papers created increasing the TP's AGI by the RAR amount (over \$1.2MIL). No Late Pay Penalty was due at this stage. Interest was not included on the original work papers, but will be doubled per Amnesty calculations when the tax is assessed/ agreed.

After the TP filed an ICB application and subsequently withdrew (before review), they were issued an IL-870 (including doubled interest-per Amnesty Regulations) on January 15, 2014 along with an EDA-70 requesting "any/all correspondence with IRS personnel... since March 22, 2012". On February 18, 2014 the TP's sent another litany of paperwork, all pre-dating the EDA-70 requested date. It is plainly obvious that the TP's are trying to delay the Department process and has no intention of cooperating or proving that they are actually in the Appeals process.

**Taxpayer's Position:**

TP believes the Proposed Notice to be premature, as TP believes the RAR has not been finalized. The TP's did not provide any convincing prove up during audit despite multiple requests for documentation.

**Compliance:**

None

**Penalties:**

None applicable at this time

**Audit Conclusion:**

The TP has received an RAR Adjustment which was finalized and never reported to this Department. TP must provide prove up that this matter is still in the Appeals stage and not simply that he is protesting/objecting to the Lien or Levy Process. **I am closing this case as Established Liability (EL) for \$71,941.00 (\$35,183.00/tax & \$36,758.00/interest) so that a formal Notice of Deficiency can be issued.**

Please note; the original work papers issued with the EDA-122 were issued at a 5% (2012) tax rate. Work papers and interest calculation have been updated.

Processing note; please adjust the TP's account per the enclosed work papers and issue a Notice of Deficiency for Tax and Interest. An updatable work paper and EDA-27 are included in the Tiamat file.

---

Greg Nelson, Revenue Auditor III

March 11, 2014



**AUDIT HISTORY WORKSHEET**  
**EDC-5**

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|                 |                           |                 |             |
|-----------------|---------------------------|-----------------|-------------|
| <b>Subject:</b> | John E Frances L Rogers   | <b>APE:</b>     | 12/02       |
| <b>Address:</b> | 162 Abingdon Ave          | <b>Cmpltd:</b>  | 03/04/14    |
| <b>City:</b>    | Kenilworth, IL 60043-1202 | <b>Track:</b>   | A1968861184 |
| <b>SS/FEIN:</b> | 343-34-8779               | <b>Statute:</b> | 12/31/9998  |
| <b>Phone:</b>   | 312.804.4676              | <b>Contact:</b> | TP          |

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- 05/08/13 John called and said this case was still in Appeals (said he hasn't been able to set a hearing date because—he says—the IRS is awaiting the outcome of another taxpayer's case). He will send me proof of the Appeals documentation by Monday. He took my Fax number.
- 05/14/13 John said he looked for it the other night and couldn't find it. I told him we needed proof he was in Appeals, otherwise we'd press forward. I gave him until the end of the week.
- 05/20/13 Contacted Kimberlee A Linthicum (IRS contact on TP's prove up). (No information about the TP was disclosed, just discussed the Appeals process in general terms). She informed me that even if the TP was requesting a face to face hearing (getting it moved to the Chicago office, which was mentioned in the TP's cover), their office would have sent him correspondence either way well since March 05, 2012.
- 11/12/13 Notified by ICB Conferee that TP had submitted prove up that his case was on appeal. Sending by inter-office mail.
- 11/18/13 Called and talked with Kim's Supervisor (Kim is out on medical leave and will be for some time, but ALL of her cases had been reassigned and TP's notified). She confirmed with me that their Division deals with "collections" of assessed amounts. It would be possible that they would handle an "innocent spouse" request, but "ship it" to Holtsville (NY) for review. Regardless, the TP would have some type of correspondence on it. (I think the TP is attempting the innocent spouse thing because everything is listed in spouse's name). She said that she could participate on a three-way call should we try and "bluff" the TP into confirming the status of his case. -----this confirms (again) that the TP's federal case has been "finalized".



**Illinois Department of Revenue**

Informal Conference Board  
100 West Randolph Street, 7-341  
Chicago, Illinois 60601  
Phone: 312 814-1722  
Fax: 312-814-3055  
louise.calvert@illinois.gov

September 19, 2013

John and Frances Rogers  
162 Abingdon Avenue  
Kenilworth, Illinois 60043

Re: ICB Docket No. 13-0271  
SSN ending in - 8779 & - 7927  
Audit ID A1968861184

Dear Mr. and Mrs. Rogers:

The Department of Revenue Informal Conference Board has received the ICB-1, Request for Informal Conference Board Review and has accepted jurisdiction of the request and opened a file under ICB Docket Number 13-0271.

Under Regulation Section 215.115, the Informal Conference Board is to review the basis of the proposed liability, including a review of your request, all supporting documentation and any additional information that you wish to submit. All additional documentation and information should have been submitted with the ICB-1. If you wish to submit such information and did not include it with the ICB-1, please submit it to me within 20 days of the date of this letter.

Your file will be assigned to an ICB conferee. The conferee will then contact you to discuss the matter and schedule an in-person conference, if one was requested.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Louise Calvert".

Louise Calvert  
Administrator

Scott, Sandra D.

---

**From:** John E. Rogers [jer@jerogers.com]  
**Sent:** Tuesday, January 14, 2014 9:26 AM  
**To:** Scott, Sandra D.  
**Subject:** Year 2002 ICB Review Withdrawal.

Dear Ms. Scott,

Thank you for your telephone call today.

I wish to withdraw the request for ICB review which I have filed.

The tracking # is A19688611841 and the last four digits of my SS# are 8779.

Thank you for your assistance, have a good day.

John E. Rogers  
162 Abingdon Avenue  
Kenilworth, IL 60043  
312-804-4676  
Fax 312-275-8180  
[jer@jerogers.com](mailto:jer@jerogers.com)

**Notice of Audit Results**  
**Form IL-870 Information**



January 21, 2014



Letter ID: L0251604832

JOHN ROGERS  
FRANCES ROGERS  
162 ABINGDON AVE  
KENILWORTH IL 60043-1202

**Taxpayer ID:** XXX-XX-8779  
**Secondary ID:** XXX-XX-7927  
**Account ID:** P13920903  
**Audit ID:** A1968861184  
**Return type:** IL-1040  
**Audit periods:** 01/2002 - 12/2002

Enclosed, please find Form IL-870, Waiver of Restrictions, showing the amount of tax and penalty we have determined is due for the periods shown above. If you agree with the amount shown on the Form IL-870, please sign and return it with your payment to the address shown below. Please note, if you sign Form IL-870 or pay the amount shown due, you waive the right to seek review by the Informal Conference Board.

If you do not pay the entire amount due within 30 days from the "Date of Issuance," January 21, 2014, shown on Form IL-870, or take advantage of your ICB rights, you may incur additional late payment penalty. If you do not sign the IL-870 **and** return it with payment, a Notice of Deficiency, explaining your rights to protest the liability and request an administrative hearing, will be issued.

Mail your payment and the signed Form IL-870 to:

AUDIT PERFECTION SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

If you are operating under the protection of the Federal Bankruptcy Court, you must contact us immediately to stop collection action. You must provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligations to file tax returns.

Sincerely,

Greg Nelson  
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19020  
SPRINGFIELD, IL 62794-9020

217 785-7245  
217 785-3251 fax

EXPLANATION OF ADJUSTMENTS

Taxpayer Name: JOHN E/FRANCES L ROGERS

SSN: -8779  
-7927

Audit Period: 12/02

Explanation:

Amount:

12/02

We changed your adjusted gross income to include a final federal change about which you did not timely notify us. [35 ILCS 5/506(a), (b)]

\$35,183.00

Interest in the amount of ~~\$30,632.00~~ has been computed through 03/04/2014.

\$18,379.00

This liability qualified for amnesty, and you did not pay this liability during the amnesty period held October 1, 2010, through November 8, 2010, your applicable penalty and interest amounts were doubled. [86 IL Adm. Code 520/101(b)]

\$18,379.00

\$71,941.00



M

CINCINNATI OH 45999-0038

71836086645481554449

In reply refer to: 0243433845  
July 10, 2012 LTR 916C 1  
36-4480698 200212 06  
Input Op: 0243433845 00009510  
BODC: SB

ABINGDON TRADING LLC  
ROGERS JOHN E MANAGER  
162 ABINGDON AVE  
KENILWORTH IL 60043-1202

CERTIFIED MAIL

Taxpayer Identification Number: 36-4480698  
Kind of Tax: Income  
Date Claim(s) Received: Oct. 24, 2011  
Tax Period(s): Dec. 31, 2002

Dear Taxpayer:

We are unable to process your claim for the tax period(s) shown above.

The service has reviewed your Administrative Adjustment Request (AAR) for Wacker Madison Fund LLC for the tax period ending Dec. 31, 2002 filed on Oct. 24, 2011. We cannot consider the AAR because on 7/6/2010, Form 870-PT(AD), Settlement Agreement for Partnership Items and Partnership Level Determinations was executed for the same tax year as the AAR. See attached for more

The AAR didn't conform to the requirements in the Treasury Regulation Section 301.6227(d)-1; see attached for further explanation. Additionally, the AAR was filed by a limited liability company (LLC) which files as partnership as a member of a second LLC filing as a partnership. An LLC filing as a partnership cannot file a partner level AAR.

If you have any questions, please call us toll free at 1-800-829-0115.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you in case we need more information. Keep a copy of this letter for your records.

Telephone Number ( ) \_\_\_\_\_ Hours \_\_\_\_\_

Thank you for your cooperation.