

ILLINOIS INDEPENDENT  
TAX TRIBUNAL

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

PETITIONERS' OBJECTION TO THE DEPARTMENT'S: (1) OBJECTION TO MOTION TO STAY PROCEEDINGS PENDING FINAL ORDER AND JUDGMENT IN GOVERNING UNITED STATES TAX COURT PROCEEDINGS DOCKET NO. 20882-14; (2) MOTION FOR SUMMARY JUDGMENT; AND (3) MOTION FOR BOND

EXHIBIT I

RESPECTFULLY SUBMITTED,  
JOHN E. AND FRANCES L. ROGERS,  
PETITIONERS,

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

Rogers & Associates  
2525 Gross Point Road  
Evanston, IL 60201  
312-376-1910  
FAX 312-275-8180  
[jer@jerogers.com](mailto:jer@jerogers.com)  
ARDC No. 2365677

RECEIVED  
UNITED STATES TAX COURT  
INTAKE #4

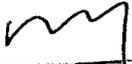
UNITED STATES TAX COURT

2014 SEP -4 AM 10: 00

FILED  
U.S. TAX COURT  
ROBERT P. BIRCH

2014 SEP -4 AM 10: 02

JOHN E. and FRANCES L. ROGERS )  
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 Petitioners, )  
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 v. )  
 )  
 COMMISSIONER of INTERNAL REVENUE, )  
 )  
 Respondent. )

BY:   
DEPUTY CLERK

Docket No. 20882-14

PETITION

The petitioners hereby petition for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in the Commissioner's notice of computational adjustment (Letter Number: 2083 dated May 27, 2011, "the Letter") a copy of which is attached as Exhibit A and as the basis for the petitioners' case allege as follows:

1. The petitioners, husband and wife, are individuals with mailing address and legal residence now at 162 Abingdon Avenue, Kenilworth Avenue, IL 60043-1202. **Address Used By Court** Petitioner John E. Rogers' taxpayer identification number is [REDACTED] and petitioner Frances L. Rogers' taxpayer identification number is [REDACTED]. The returns for the period involved here were filed with the Internal Revenue Service Center at Kansas City, MO.

2. The Commissioner erred by refusing to issue a formal Statutory Notice of Deficiency ("SNOD") to petitioners pursuant to Section 6213(a) despite petitioners' pleas to do so.

3. The Commissioner erred in not issuing a SNOD to petitioners because the declaration in the first paragraph of the Letter states that the additional tax of \$361,067 was the result of Respondent's examination of petitioners' 2002 tax return.

4. This honorable court has jurisdiction to determine that respondent has willfully attempted to deny petitioners access to this court through multiple, blatant, willful abuses of discretion in Holtsville, Cincinnati, Kansas City and Fresno, including denying petitioners issuance of a SNOD when the content and declarations of respondent's own assessment documents required it.

5. The determination of the tax set forth in said notice of assessment of deficiency are based on the following errors:

a. Respondent has willfully, arbitrarily, and capriciously denied petitioners access to the judicial review of her administrative actions to which petitioners are entitled.

b. Respondent has audited almost every tax return filed by petitioners since 1991 and has instructed the examining agents to mechanically deny petitioners' deductions.

c. Respondent's denial of due process to petitioners continues a decades long vendetta against petitioners.

d. The Commissioner erred by abusing her discretion by refusing to consider the facts stated in petitioners' objections to the notice of deficiency set forth in petitioners' detailed letters to respondent's Holtsville, NY office.

e. The Notice is barred by the three year statute of limitations. 26 USC §6501.

f. The Notice erroneously states that petitioners' 2002 Federal Form 1040 was examined by the IRS and that the IRS made changes to taxable income as a result of such examination. This statement mandated that a notice of deficiency be issued and a partnership proceeding be commenced as to Abingdon.

g. The Wacker-Madison settlement agreement was a reduction in the losses claimed by Wacker-Madison by 75%. Instead of reducing the loss flowing through Abingdon from Wacker-Madison by 75% the IRS erroneously leapfrogged an exceedingly large amount of phantom income over the operating agreement of Abingdon and directly to petitioners AGI even though petitioners were merely remote indirect partners in Wacker-Madison at best.

h. The Commissioner erred by arbitrarily and capriciously denying petitioners an opportunity to challenge respondent's calculations at the Abingdon level by failing to issue an FPAA to Abingdon.

i. The Commissioner erred by assessing petitioner on income when respondent's settlement with Wacker Madison was a mere limitation on losses, not an assessment of income.

j. The Commissioner erred by assessing petitioner income in excess of losses claimed from Abingdon in disregard of special allocations of all cash to other members of Abingdon.

k. The Commissioner erroneously leapfrogged calculation at the Abingdon level and allocated petitioner husband an amount of phantom income without substantial economic effect due to failure to follow special allocations of cash at the Abingdon level. *Eisner v. Macomber*, 252 US 189 (1920) and *Liberty Insurance Bank v. CIR*, 14 BTA 1428, 1434 (1929).

l. The Commissioner has abused her discretion by refusing petitioners their rights to a Collection Due Process hearing at which these computational adjustments could be addressed and petitioners issued a Final Notice of Determination which petitioners may appeal to the United States Tax Court.

m. The Commissioner has erred by assessing interest and late payment penalties for periods both before and after March, 2012, when the IRS finally acknowledged petitioners' right to a Collection Due Process Hearing. Such interest and penalties, if any, are to be abated when the cause for delay does not lie with the petitioners but rather with the IRS.

6. The facts upon which petitioner relies, as the basis of the petitioners' case, are as follows:

a. May 30, 2011, only three days after the notice of deficiency and assessment Petitioner wrote to Respondent's designee, Kim Lobalsamo, ("Lobalsamo") objecting to the notice of deficiency or assessment. See Exhibit C. See also petitioner's letter of May 30, 2011, attached as Exhibit B.

b. August 19, 2011, Lobalsamo merely regurgitated computations without even acknowledging petitioners' factual and legal objections to those same computations. Exhibit N. Exhibit N is a per se abuse of discretion by respondent.

c. Lobalsamo's terse letter of August 31, 2011, that respondent's "technical unit" thought their report was correct exemplifies the arrogant abuse of discretion by respondent in refusing to deal with the facts set forth by petitioners. See Exhibit C.

d. Respondent has refused to issue a formal Statutory Notice of Deficiency (“SNOD”) to petitioners and has intentionally denied petitioners any hearing at any level on the correctness of respondent’s calculations in assessing a deficiency. See Exhibit D.

e. Respondent has refused to issue an FPAA to Abingdon and has erroneously made calculations at the Abingdon level while denying the petitioner as a member in the 2002 filed Form 1065 an opportunity for any due process hearing of computations at the Abingdon level. See Exhibits E and P.

f. Respondent has refused to disclose to petitioners how adjustments to the Wacker Madison 2002 Form 1065 have technically affected their 2002 Form 1040, whether such adjustments were partnership, non-partnership, partner, or affected items in violation of her own operating manual. See Exhibit P.

g. Respondent’s leapfrogging of Abingdon has converted any Wacker Madison adjustments to mere affected items at the petitioner level assessment of tax upon which is barred by Section 6501. See Exhibit P.

h. September 6, 2011, petitioner responded to the August 31, 2011, letter from Lobalsamo explaining the source of his numbers in his previous correspondence. Exhibit D.

i. The September 6, 2011, letter specifically requested a formal Notice of Deficiency so that petitioner could seek judicial review of respondent’s steadfast refusal to deal with his complaints as to errors in computations. See Exhibit D.

j. September 12, 2011, respondent issued a notice to petitioners stating respondent's intent to seize petitioners' property if petitioners did not immediately pay \$608,474.06 in tax plus penalties and interest. Exhibit F.

k. October 2, 2011, petitioner wrote to respondent at Holtsville setting forth additional facts as to why respondent's calculations were incorrect. Petitioner believes he did not receive a response to his October 2, 2011, letter. See Exhibit E.

l. In Exhibit E petitioner restated his pleas that a Statutory Notice of Deficiency be issued so that petitioner could seek redress in Tax Court. Respondent refused to respond.

m. October 19, 2011, petitioners filed a Personal Form 8082 with respect to Abingdon with the Kansas City service center. It was totally ignored. Exhibit G.

n. November 7, 2011, respondent seized a \$600 refund due petitioners without due process. See Exhibit H.

o. November 14, 2011, respondent seized a \$14,921 refund due taxpayer without due process. Exhibit I.

p. February 4, 2012, petitioners filed Form 12153 requesting a collection due process hearing. Exhibits J and K.

q. October 24, 2011, petitioner filed Form 8082 for Abingdon Trading, LLC, as a member and manager for Abingdon providing explicit details as to error in respondent's calculations at the Abingdon level, assuming once again that the letter of May 27, 2011, was based on adjustments to Abingdon's 2002 tax return. Exhibit L.

r. February 28, 2012, Lobalsamo issued a form letter to petitioners that petitioners' claim was not timely filed with no explanation whatsoever. Lobalsamo referenced only petitioners' 2002 Form 1040 but relies upon Section 6230, a TEFRA section of the IRC. Exhibit L.

s. Only Form 8082 for Abingdon was filed so respondent's form letter totally ignored respondent's own manual. See Exhibit P.

t. July 10, 2012, respondent's Cincinnati Service Center issued a nonsensical form letter to Abingdon mislabeling the Form 8082 for Abingdon as a Form 8082 for Wacker Madison when it was clearly a 2002 amended tax return for Abingdon. The July 10, 2012 letter did not assert late filing of Form 8082.

u. The July 10, 2012 erroneously asserted that an LLC cannot file a partner level AAR and compounding its error that the filed Form 8082 was with respect to Wacker Madison and not for Abingdon.

v. The Form 1082 was an amended return of Abingdon setting forth the computational defects in the May 27, 2010, letter from Patricia DeMaio, the deficiency and assessment letter. The Letter. See Exhibits A and M.

w. Respondent has violated her own Internal Revenue Manual by not recognizing the Abingdon 1082, particularly by not conducting an Abingdon level partnership proceeding or by not mailing petitioner a notice that all Abingdon items would be treated as non-partnership items. Exhibit P, Paragraph 4, items b and c.

x. February 24, 2012, respondent informed petitioners that their Form 12153 dated February 4, 2012, had been referred to respondent's Appeals Office in Fresno, CA.

y. March 22, 2012, the Fresno service center wrote petitioners that their Collection Due Process – Levy matter had been received in the Fresno service center.

z. Respondent's letter of March 22, 2012, promised that petitioners would be promptly contacted by Kimberlee A. Linthicum ("Linthicum"). It also promised that Linthicum would consider the facts in petitioners' case in an attempt to resolve the matter. Exhibit O.

aa. Linthicum has never contacted the petitioners.

bb. Telephone calls to Linthicum have gone unanswered.

cc. Linthicum has refused to respond to faxed letters to her to set up a hearing.

dd. Linthicum has willfully denied petitioners due process in this matter.

ee. Petitioners received no economic "net income" from Abingdon through 2002 as all cash was allocated to other members of Abingdon by special allocations in 2002.

7. For Affirmative Defenses petitioners state as follows:

a. Petitioner Frances L. Rogers has filed for innocent spouse relief for the year 2002.

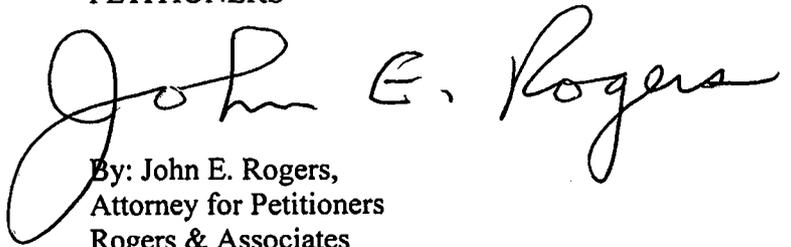
CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Petitioners pray that this Court may try this case, determine that the "Notice" be modified, canceled, or compromised for the reasons contained herein, that interest and penalties be abated to avoid unjust enrichment of Respondent, that property of petitioners previously seized by respondent without due process be refunded, that respondent to cease and desist collection action, that petitioners have receive the proper judicial review of respondent's administrative actions, and that the Court give such other and further relief as the Court may deem fit and proper.

Respectfully submitted,

JOHN E. AND FRANCES L. ROGERS,  
PETITIONERS

ADMITTED



By: John E. Rogers,  
Attorney for Petitioners  
Rogers & Associates  
2525 Gross Point Road  
Evanston, IL 60201  
312-376-1910  
FAX 312-275-8180  
[jer@jerogers.com](mailto:jer@jerogers.com)  
T.C. Bar No. RJ0954









































































































































































































