ORIGINAL

ILLINOIS INDEPENDENT

TAX TRIBUNAL

RECEIVED
AUG 06 2014
BY:

14 TT 153

John E. and Frances L. Rogers,	)
	)
Petitioners,	)
	)
v.	)
	)
ILLINOIS DEPARTMENT	)
OF REVENUE,	)
	)
Respondent.	)

PETITION

The Petitioners, John E. Rogers and Frances L. Rogers, husband and wife, hereby petition the Illinois Independent Tax Tribunal to review and modify the Notice of Deficiency ("Notice") issued by the Illinois Department of Revenue ("Department"), for the reasons stated below:

INTRODUCTION

The "Notice" was issued by the Department on June 9, 2014, assessing tax in the amount of $72,000 and interest in the amount of $37,153.56 for the taxable period 2002. A copy of the "Notice" is attached to this Petition.

The petitioners are individuals with their residence in Kenilworth, Illinois. It is located at 162 Abingdon Avenue, Kenilworth, Illinois 60043. The Taxpayer Account number is [redacted] 8779.

BACKGROUND AND RELEVANT FACTS

Petitioners timely filed both federal and Illinois personal income tas returns for the taxable period 2002 in 2003. The returns as filed claimed a $495,000 loss from Abingdon

Trading, LLC ("Abingdon"), an Illinois limited liability company taxed as a partnership. The $495,000 amount resulted from the flow through of a larger loss incurred by Wacker-Madison Fund, LLC ("Wacker-Madison"), another Illinois limited liability company taxed as a partnership in which Abingdon, held a minor interest. Petitioners received no "net income" from Abingdon through 2002.

Wacker-Madison entered into a settlement agreement with the IRS in which petitioners understand that the losses of Wacker-Madison were reduced by 75%, i.e. 25% of the reported loss of Wacker-Madison remained.

The Notice attempts to tax petitioners on "net income" of $1,184,185 from Abingdon when they had not received any such income. Petitioners claim the appropriate tax result is the straight forward disallowance of 75% of petitioners' $495,000 reported loss from Abingdon in 2002. Petitioners offered to settle the case on that basis in written interchanges prior to issuance of the Notice.

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

Petitioners pursued a Collection Due Process hearing at which the miscalculations of the IRS would be reviewed and corrections made. See the notice of hearing which the petitioners received over two years ago. Numerous telephone calls to the appeals officer in Fresno have

gone unanswered. The IRS adjustments are not final until the hearing is held and the appeals officer issues a notice of final determination which is appealable to the US Tax Court. Payment of the IRS proposed tax and suing for a refund in the Northern District of Illinois is not practical as petitioners have never seen a dime of the income attributed to them mindlessly by the IRS. Respondent now attempts to compound petitioners' financial disadvantage by prematurely claiming finality when there has been none.

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

APPLICABLE LAW

First, Petitioners believe the law is clear that they are taxable upon increases in net income resulting from final adjustments to Adjusted Gross Income ("AGI") by the IRS. Second, Petitioners also believe it is clear that no such finality has been achieved by the IRS because the IRS has failed to conduct the statutorily mandated Collection Due Process Hearing. Third, Petitioners also believe that the law is clear that Respondent as the IRS is limited in an increase to AGI to the amount deducted by Petitioners on their 2002 Illinois income tax return in this case. This result arises from the principles of the Tax Benefit Rule found codified in part in Section 111 of the Internal Revenue Code. Fourth, Petitioners also believe the law is clear that late payment penalty and interest from March 2012 should be abated for the dilatory conduct of the IRS appeals officer. Fifth, petitioners also believe the law is clear that in such circumstances as set forth above the proper procedure for Respondent is to defer proceedings until the IRS has followed the law and acted with finality or to settle the case on this court's findings of the correct amount of net income consistent with petitioners' statements above and

other relevant laws as the court finds appropriate. For example the court may determine the matter ripe for adjudication even though the IRS has not acted with finality and its computations are in error. The IRS has merely made computational adjustments to petitioners' AGI without due process protections of court review for correctness and finality.

Lastly but with priority in concept, the Notice violates the clear prescriptions of the three year applicable statute of limitations.

ERROR I

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

The Notice erroneously states that petitioners' 2002 Federal Form 1040 was audited by the IRS and that the IRS made changes to taxable income as a result of such audit. That is false.

In fact a partnership several tiers below the petitioners' 2002 Federal Form 1040 was audited and changes were in fact made to its taxable income. The audited partnership was named Wacker-Madison as stated above. Petitioners are unaware whether Wacker-Madison filed an amended Illinois Form IL1065 to report finalized adjustments to its 2002 Federal Form 1065. Neither Petitioners nor Abingdon have ever received such a document or other such communication to petitioners' knowledge. Without such an amended K-1 Abingdon is without a basis to correctly apportion the Wacker-Madison adjustments to its members.

The petitioner husband held a minor interest in Wacker-Madison through another Illinois limited liability company, Abingdon. Neither the petitioners' nor Abingdon's 2002 Federal income tax returns were audited.

The Wacker-Madison settlement agreement was in essence 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 leapfrogged an exceedingly large amount of phantom income over the operating agreement of Abingdon and directly to petitioners AGI even through petitioners were merely remote indirect partners in Wacker-Madison at best.

Petitioner husband was a very remote indirect partner in a partnership for which petitioner husband was not even provided details of a settlement with the IRS. Petitioner husband recalls no receipt of a notice that his 2002 statute of limitations was tolled for either Abingdon's nor petitioners' 2002 federal income tax returns. Due process requires such notice and a hearing for a statute of limitations tolling, particularly as a remote indirect partner without notice rights. Additionally, the complexities of the Abingdon organic documents required an FPAA at the Abingdon level, not a mere leapfrogging of Abingdon.

For the reasons stated, therefore, petitioners respectfully request that this Court rule that the Notice is barred by the applicable three year statute of limitations.

ERROR II

The Notice, if it survives the statute of limitations, is barred by the Tax Benefit Doctrine partially codified in 26 USC §111.

The IRS miscalculations erroneously leapfrogged calculation at the Abingdon level and allocated petitioner husband an amount of income more than twice the deductions he claimed from the Abingdon 2002 Form 1065, primarily an allocation of cash gross receipts in which petitioner husband never shared in 2002. The other two members of Abingdon were the sole recipients of cash income and are to be solely taxed on Abingdon's cash gross receipts per the Abingdon agreements. It is fundamentally unfair to allocate cash to petitioner in 2011 which he never received in 2002. "Net income" excludes cash never received from income. Petitioners

had no gross receipts and therefore no "Net Income" at the Abingdon level, the level of calculation to which petitioner husband was ever privy.

The calculations brought forth by the IRS accordingly violate the tax benefit doctrine which limits recapture of deductions to the amount claimed. The Notice allocates an amount of phantom income to petitioner husband which exceeds the deductions he claimed. Second, the calculations by the IRS are made without attention to the allocation of income, deductions and cash rules found in the Abingdon operating agreement and the members' gloss thereon.

ERROR III

The third error on which the Notice is based is that the IRS remains far from making a final adjustment. Petitioners have exercised their rights to claim a Collection Due Process hearing at which these computational adjustments should be corrected, a final determination actually made, and petitioners issued a Final Notice of Determination which petitioners may appeal to the United States Tax Court. There is no finality of the federal amounts upon which the Notice is based and this action is either premature or is to be settled upon this court's approval of stipulated computations of correct amounts in spite of IRS dereliction in the short term.

ERROR IV

The Notice is also erroneous because it adds back to net income an amount of phantom income in excess of the loss claimed on the original return without any vestige of actual net income being in sight. Petitioners received no "net income" upon which a tax may be based under the Illinois Income Tax Act. Eisner v. Macomber, 252 US 189 (1920) and Liberty Insurance Bank v. CIR, 14 BTA 1428, 1434 (1929).

ERROR V

Respondent has assessed interest and may assess late payment penalties for periods beyond 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 and also when Respondent has refused to consider good faith offers to settle on a reasonable basis by petitioners.

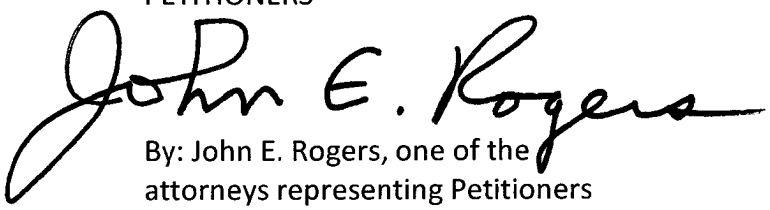
CONCLUSION AND RELIEF REQUESTED

WHEREAS, Petitioners request that the "Notice" be modified, canceled, or compromised for the reasons contained herein;

Alternatively, if the notice is not cancelled that interest and penalties be abated as required to avoid unjust enrichment of Respondent.

Alternatively that petitioner wife's filing for innocent spouse treatment at the federal level be honored at Respondent's level.

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
ARDC No. 2365677

Notice of Deficiency

for Form IL-1040, Individual Income Tax Return

STATE OF **Illinois**
DEPARTMENT OF REVENUE
tax.illinois.gov

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).** 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)**, 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.