

ILLINOIS INDEPENDENT TAX TRIBUNAL

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

**DEPARTMENT’S MOTION FOR BOND
PURSUANT TO SECTION 1-45 OF THE INDEPENDENT TAX TRIBUNAL ACT**

The Illinois Department of Revenue, (the “Department”) by and through Lisa Madigan, Attorney General of and for the State of Illinois, respectfully requests this Tribunal 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. In support of its Motion, the Department states as follows:

1. 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).

2. The Department asserts that Petitioners’ protest to this Tribunal is both legally insufficient and primarily for the purposes of delaying the collection of tax.

3. Petitioner’s protest is legally insufficient for the following reasons:

a) The partnership tax liability of Abingdon Trading LLC became final upon the execution of the 870-LT dated 6/19/2008, which evidences John E. Rogers’ agreement with the IRS’s assessment made to Abingdon Trading LLC for the tax

year ending 2002 and waiving any statutory restrictions on assessment to the partners of Abingdon Trading LLC (26 U.S.C. 6213(d));

- b) Petitioners'/Taxpayer's 2002 federal income tax assessment became final on May 25, 2011, as evidenced by Taxpayer's 2002 Account Transcript; and
- c) The IRS was not required to issue a Notice of Deficiency to Petitioners/Taxpayer pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA").

4. Department hereby incorporates the attached Memorandum of Law in Support of Department's Motion for Bond as if fully set forth in this paragraph.

5. Petitioner argues that the "additional tax assessed by examination" of \$356,006 for the tax year ending December 31, 2002, and resulting in federal adjusted gross income of \$1,184,185, is not a final assessment because Petitioner/Taxpayer has requested a Collection Due Process Hearing.

6. Petitioner's protest is legally insufficient because the attached Federal Account Transcript shows that the IRS made an adjustment to Taxpayer's Adjusted Gross Income for the tax year ending December 31, 2002, on May 25, 2011 (hereinafter "the 2002 Adjustment").

7. Taxpayer's 2002 Federal AGI was "finally determined" by the IRS on May 25, 2011 when the IRS recorded the 2002 adjustment on Taxpayer's 2002 account transcript. See attached Exhibit 1.

8. 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).

9. Because Taxpayer’s 2002 IRS Account Transcript dated September 4, 2014, shows “additional tax assessed” of \$356,006 on May 25, 2011, that assessment is final.

10. Therefore, Taxpayer’s 2002 federal adjusted gross income of \$1,184,185 is also final.

11. For these reasons, Petitioner’s protest is frivolous, and Petitioner is unlikely to prevail on the merits.

12. Petitioner’s protest is primarily for the purposes of delaying the collection of tax.

13. Petitioner argues that his 2002 federal adjusted gross income of \$1,184,185 is not finally determined because Petitioner/Taxpayer has requested a Collection Due Process Hearing.

14. Petitioner, John E. Rogers, is a Harvard Law graduate and an experienced attorney who has practiced in federal income tax law for several decades.

15. Petitioner should also know that a Collection Due Process Hearing is only for challenging collection actions of a final assessment, because the IRS may collect only final assessments. Treas. Reg. §301.6502-1; See IRS Publication 1660; IRS Form 12153.

16. Thus, this action, and Taxpayer’s representations in support of this action, are made primarily for purposes of delaying collection by the Department of the Illinois tax liability shown on the Notice of Deficiency.

17. As an aside, the Department would like to point out that if the IRS makes a change to Taxpayer’s 2002 U.S. income tax assessment as the result of the Collection Due

Process Hearing, and that change results in a decrease in Illinois tax, Taxpayer may file a claim for refund of Illinois income tax resulting from that federal change. 35 ILCS 5/911(b); 506(b). Thus, Taxpayer is not without a remedy if this Tribunal holds in favor of the Department on the merits.

WHEREFORE, the Department requests this Tribunal enter an Order

- a) Granting Department's Motion for Bond,
- b) Finding that Petitioners' protest is legally insufficient;
- c) Finding that Petitioners' protest is primarily for the purposes of delaying the collection of tax;
- d) Ordering Taxpayer to post a bond of \$17,392.72 within thirty (30) days;
- e) Holding that Petitioners' Motion for a Stay will be denied if Taxpayer fails to post a bond of \$17,392.72 within thirty (30) days; and
- f) Any further relief this Tribunal deems just.

Respectfully submitted,

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

By: _____
Jennifer Kieffer
Special Assistant Attorney General

Date: December 1, 2014

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