

ILLINOIS INDEPENDENT  
TAX TRIBUNAL

VARUGHESE VARGHESE,	)	
	)	
Petitioner,	)	
v.	)	
	)	No. 15 TT 77
ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	Chief Judge James M. Conway
	)	
Respondent.	)	

MOTION TO TREAT  
THE PETITION AS  
A PROTEST OF A DENIAL OF A CLAIM FOR REFUND

The Petitioner, VARUGHESE VARGHESE, by his attorney, Michael C. Whelan, states.

1. On April 17, 2015, the Petitioner's attorney filed the Petition with the Tax Tribunal.
2. Along with the Petition, the Petitioner's attorney filed a Motion for Emergency Relief regarding several collection actions the Department has taken including a pending notice of levy on Petitioner's bank account at Bank of America. Bank of America is scheduled to turn over \$77,038.82 to the Department tomorrow, April 21, 2015.
3. On April 17, 2015, Judge Conway entered an order stating in part that the Tribunal "does not have the authority to intercede in any collection matter a Petitioner may have with the Department."

4. In said April 17, 2015 order, Judge Conway scheduled an initial status conference for April 20, 2015 at 10:00 am. by telephone.

5. On April 17, 2015, at about 5:10 pm., copies of the Petition, Motion for Emergency Relief, and the Order dated April 17, 2015, were faxed to the Illinois Department of Revenue Office of Legal Services at fax no. (312) 814-4344. The fax cover sheet stated in part: "Please note that an initial status conference is April 20, 2015 at 10:00 am by telephone."

6. As of the drafting of this subject motion (April 20, 2015 about 4:30 pm), said initial status conference has not been held and Petitioner's attorney has not received any communication as to the assignment of an attorney for the Department in this case.

7. At this time it appears that Bank of America will be turning over the above described funds to the Department tomorrow.

8. The Tax Tribunal Act, at 35 ILCS 1010/1-45(d) provides:

(d) If, with or after the filing of a timely petition, the taxpayer pays all or part of the tax or other amount in issue before the Tax Tribunal has rendered a decision, the Tax Tribunal shall treat the taxpayer's petition as a protest of a denial of claim for refund of the amount so paid upon a written motion filed by the taxpayer.

9. Said provision of the Tax Tribunal Act does not state whether such a motion needs to be filed before the payment so this motion is filed in the event the Tax Tribunal Act might be so construed.

WHEREFORE, Petitioner requests the following relief:

A. Insofar as the Department has levied and has or will collect funds, the Petition shall be treated as a protest of a denial of claim for refund.

VARUGHESE VARGHESE

By: 

One of the Attorneys Representing Petitioner

Representatives:

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Certificate of Service

The undersigned, an attorney, certifies that on April 20 2015, at 4:56 p. m., from 2860 River Road, Suite 240, Des Plaines, IL 60018, he sent a copy of the attached Motion to the Department by fax to (312) 814-4344.

Kevin D. Sprow