

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION, §
Plaintiff, §
v. § CIVIL # 3:09-CV-0298-N
STANFORD INTERNATIONAL BANK, LTD., §
ET AL., §
Defendants. §

**UNITED STATES (IRS) MOTION TO INTERVENE, MOTION FOR RELIEF
FROM TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION TO
ALLOW TAX COURT AND ADMINISTRATIVE PROCEEDINGS, MOTION TO
ASSESS, AND MOTION TO COMPEL TAX RETURN**

At the direction of the Attorney General of the United States, and with the authorization and at the request of Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury, in accordance with 26 U.S.C. §§ 7401 and 7403, the United States on behalf of its agency the Internal Revenue Service, files this its Motion to Intervene, Motion for Relief From Temporary Restraining Order/Preliminary Injunction to Allow Tax Court and Administrative Proceedings, Motion to Assess, and Motion to Compel Tax Return, and states as follows:

1. On February 17, 2009, the Securities and Exchange Commission requested and the Court granted a temporary restraining order, appointed a receiver, froze assets, and ordered expedited discovery, an accounting and preservation of documents.
2. In its February "Order Appointing Receiver" as well as its March 12, 2009 "Amended Order Appointing Receiver," the Court enjoined all creditors from "the commencement or continuation ... of any judicial, administrative, or other proceeding against...any of the defendants," "any act to create, perfect or enforce any lien against the property" as well "any act to collect, assess or recover a claim, ... or that would attach to or encumber the Receivership

estate.”¹

A. U.S. Motion to Intervene: IRS is a Creditor.

3. Pursuant to Fed. R. Civ. P. 24(a), 24(b)(2) and 65, the United States moves to intervene in the above-referenced case as a creditor under the Internal Revenue Code with claims, statutory assessments and liens against R. Allen Stanford, his property and rights to property. The IRS asserts that R. Allen Stanford and Susan Stanford are indebted to the United States for \$226,645,537.00 in unpaid federal income taxes for the periods and in the amounts listed below:

Period	Income Tax	Penalties	Interest
1999	\$ 3,250,466.00	\$ 1,462,910.00	\$ 2,528,512.00
2000	\$14,481,227.00	\$ 6,516,552.00	\$ 9,062,953.00
2001	\$36,985,575.00	\$16,643,292.00	\$19,126,704.00
2002	\$14,794,010.00	\$ 8,283,640.00	\$ 8,991,770.00
2003	\$40,586,009.00	\$22,931,828.00	\$21,000,089.00
Total	\$110,097,287.00	\$55,838,222.00	\$60,710,028.00

In addition, R. Allen Stanford and Susan Stanford may owe additional federal income taxes as they have not filed their income tax return for 2007 nor have they made any estimated quarterly tax deposits for that year.

4. The IRS made assessments and filed notices of liens against R. Allen Stanford for his unpaid federal income taxes for tax years 2002 and 2003. According to 26 U.S.C. §§ 6321 and 6322, a federal tax lien arises upon the date that the IRS assesses unpaid taxes, and applies until the debt is fully satisfied. The tax lien is effective against all property and rights to property,

¹ See “Order Appointing Receiver,” entered February 17, 2009 [Doc #10] at paragraphs 7 and 8. The same provisions are at paragraphs 9 and 10 of the Court’s “Amended Order Appointing Receiver” entered on March 12, 2009 [Doc #157] (hereafter, the “Receivership Order”).

whether real or personal, including after-acquired property belonging to the taxpayer satisfied.² Consequently, under Fed. R. Civ. P. 24(b)(2) that provides for intervention by a federal agency, the United States is entitled to intervene where the government's claim is based on the Internal Revenue Code and the IRS is a creditor of R. Allen Stanford.

B. U.S. Motion to Proceed in Tax Court and to Assess Taxes for 1999, 2000 & 2001.

5. The United States moves the Court for entry of an order allowing the Commissioner of the Internal Revenue Service to continue litigation to final decision and to make assessments of liabilities in consolidated U.S. Tax Court cases against R. Allen Stanford and Susan Stanford for their joint and several liability to the United States for unpaid federal income (1040) taxes for tax years 1999, 2000 and 2001. These liabilities were not assessed before February 17, 2009, but are assessable under an Internal Revenue Code statute³ despite this Court's Receivership Order and temporary restraining order/preliminary injunction.

6. R. Allen Stanford and Susan Stanford filed their initial petition to Tax Court, Docket No. 3208-06, on February 13, 2006 to dispute the IRS determination of the following deficiency for tax year 1999: Tax: \$3,250,466.00; and Penalties: \$1,462,910.95. The Stanfords filed a second petition to Tax Court, Docket No. 2743-08, on January 30, 2008 to dispute the IRS determination of the following deficiencies for tax years 2000 and 2001: 2000 Tax: \$14,481,227.00; and Penalties: \$6,516,552.00; and 2001 Tax: \$36,985,575.00; and Penalties: \$16,643,292.00.

² 26 U.S.C. § 6321; United States v. National Bank of Commerce, 472 U.S. 713, 719 (1985); Glass City Bank v. United States, 326 U.S. 265, 267-69 (1945); Texas Commerce Bank-Fort Worth, N.A. v. United States, 896 F.2d 152, 161 (5th Cir. 1990).

³ 26 U.S.C. § 6871, as discussed below.

7. The Tax Court cases were consolidated and a stipulation of settled issues was filed February 8, 2008. Status reports were filed as the parties participated in continuing discussions for discovery and resolution of various issues. The complex issues in these cases require consideration of IRS adjustments made to the Stanfords' income tax returns and the tax returns of certain S corporations and related entities in which the Stanfords were shareholders.⁴ The parties have invested considerable resources in these cases to date and should proceed with discovery, issue resolution, briefing and trial in the U.S. Tax Court to gain a final decision.

8. Based on two statutes in the Internal Revenue Code, the IRS is entitled to proceed with the Tax Court cases and to make assessments as needed. First, 26 U.S.C. § 7421(a), with stated exceptions not relevant here,⁵ provides that “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.” Congress enacted the Anti-Injunction statute to limit the courts' ability to enjoin the collection or investigation of both civil tax liabilities and investigations of criminal violations of the tax laws. The U.S. Supreme Court has ruled that “[c]ourts should liberally construe Sec. 7421 to protect the government's "need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement

⁴ The primary issues are: (1) whether expense deductions incurred by Mr. Stanford's wholly-owned S Corporation, Stanford Financial Group, Inc. (SFGC), are ordinary and necessary and not allowed as flow-through losses to the taxpayers; (2) whether cash distributions from Stanford International Bank, Ltd., Mr. Stanford's wholly-owned foreign bank, to SFGC are capital gains to the taxpayers; and (3) whether the Stanfords are liable for accuracy-related and delinquency penalties.

⁵ In particular, IRS collection of the audit deficiencies for 1999, 2000 and 2001 cannot be made in the absence of an assessment of those liabilities against the Stanfords. Thus, the 26 U.S.C. § 6015(e)(1)(B) exception to Section 7421(a) is not applicable. The remaining 13 listed exceptions are not relevant to this case as they involve partnership proceedings, wrongful levies, trust fund taxes, return preparer penalties, etc.

interference.”⁶ None of statutory exceptions listed in 26 U.S.C. § 7421(a) apply to this case. Further, the judicial exception created by the Supreme Court in Enochs v. Williams Packing & Navigation Co., 370 U.S. 1 (1962) to the Anti-Injunction statute is not satisfied. The judicial exception is **narrower** than the usual standard for an injunction because it requires an **additional element**: that the taxpayer must show clearly that under no circumstances could the government prevail.⁷ Here, as to tax years 1999-2001, the Stanfords have an adequate remedy at law—their Tax Court petitions—and cannot show that the government would fail under all circumstances.

Second, upon the appointment of a receiver, 26 U.S.C. § 6871(a) grants the IRS the authority and discretion to immediately assess deficiencies together with all interest, additional amounts and statutory additions determined by the Secretary. The Secretary has determined deficiencies owed by the Stanfords for tax years 1999-2001, and notwithstanding the Tax Court cases that are pending, the IRS may assess those deficiencies against the Stanfords. Consequently, in light of 26 U.S.C. §§ 7421(a) and 6871(a), the Court’s Receivership Order and temporary restraining order/preliminary injunction must not halt the IRS from proceeding in Tax Court nor restrict the IRS from assessing deficiencies against the Stanfords.

9. Two other considerations support an order eliminating or modifying the Court’s Receivership Order to free the IRS from compliance. First, the United States acknowledges that under 26 U.S.C. § 6871(c), the IRS may have this Court adjudicate the litigation pending in the Tax Court. But the parties and the court are far along in the litigation in Tax Court and a final

⁶ Bob Jones University v. Simon, 416 U.S. 725, 736 (1974).

⁷ Enochs, 370 U.S. at 6-7.

decision, even following a multi-week trial, may be made earlier there. That route would be a wiser use of judicial resources. Second, paragraph 15 of the Court's Order Appointing Receiver may be read to allow the IRS to proceed in Tax Court. In any event, the United States seeks an order recognizing its ability to do so. Therefore, the United States moves the Court to allow the IRS to proceed in Tax Court and to assess the taxes, penalties, statutory additions to tax and interest against R. Allen Stanford and Susan Stanford resulting from a final decision in the Tax Court cases. In addition, the order granting this motion should clarify that the IRS has the discretion to make an immediate assessment at any time based on 26 U.S.C. § 6871.

C. U.S. Motion To Modify Injunction to Allow IRS to Conduct Hearings.

10. The United States moves the Court to modify its Receivership Order to the extent that it enjoined the IRS from "the commencement or continuation ... of any judicial, administrative, or other proceeding against...any of the defendants."⁸ Specifically, the United States moves the Court for an order allowing the IRS Office of Appeals to consider the Stanfords' collection due process cases and if warranted, to issue a notice of determination for tax years 2002 and 2003.

11. The IRS issued notices of deficiency for tax years 2002 and 2003 but the Stanfords did not petition the Tax Court. The IRS assessed the additional liabilities and filed Notices of Federal Tax Liens against the Stanfords for 2002 and 2003 in Harris County, Texas on July 24, 2008.⁹ On August 11, 2008, the IRS issued a notice of intent to levy. On August 19, 2008, the Stanfords requested a collection due process (CDP) hearing under 26 U.S.C. § 6320 challenging

⁸ See Receivership Order [Doc. # 157] at ¶ 9(a).

⁹ The IRS filed additional liens for 2002 and 2003 in Miami, Dade County, Florida on August 21, 2008 and in St. Croix, Christiansted, Virgin Islands on August 22, 2008. The Stanfords are entitled to a collection due process hearing only as to the first notice of tax lien that is filed for the particular tax period. 26 U.S.C. § 6320(b)(2).

the lien filing, and a CDP hearing under 26 U.S.C. § 6330 to contest the IRS intent to levy.

The Stanfords have also challenged the validity of the underlying tax liabilities for 2002 and 2003. Under the statutory scheme of 26 U.S.C. §§ 6320 and 6330, the IRS Office of Appeals is charged with conducting the hearing. 26 U.S.C. §§ 6320(b)(1), 6330(b)(1). Under 26 U.S.C. § 6330(d), the taxpayers may appeal an adverse determination by the IRS Office of Appeals to the U.S. Tax Court which has express jurisdiction. 26 U.S.C. § 6330(d)(1).

12. Consequently, as discussed above, 26 U.S.C. § 7421(a), the anti-injunction statute contained in the Internal Revenue Code, would block this Court from enjoining the IRS in its administrative investigation and statutory duty under 26 U.S.C. §§ 6320 and 6330 to determine the amount of federal tax liabilities owed by the Stanfords and the manner of collecting those liabilities. The United States moves the Court for an order allowing the IRS Office of Appeals to consider Stanfords' collection due process cases and to issue a notice of determination for tax years 2002 and 2003.

D. U.S. Motion to Compel R. Allen Stanford to File His Income Tax Return for 2007.

13. The United States expects that the receiver in this case will establish a deadline for creditors of the defendants to file claims. The IRS shall file a fairly significant claim against R. Allen Stanford. To file an accurate and complete claim, the IRS will need to resolve the amount of R. Allen Stanford's unpaid federal income tax liabilities for tax years 1999-2008 as well as the short period of January 1, 2009 to February 17, 2009. Thus, the United States has moved this Court to allow the continuation and completion of the Tax Court cases for tax years 1999-2001 and the collection due process cases for tax years 2002-2003. In addition, for its claim in this proceeding, the IRS needs Mr. Stanford to file his federal income (1040) tax return for tax year 2007.

14. 26 U.S.C. § 6011(a) requires R. Allen Stanford to file his federal income (1040) tax return for tax year 2007. The federal income tax system is based upon taxpayers filing tax returns. Without being able to refer to a properly filed return by Mr. Stanford, the IRS is entitled to make a substitute for return, pursuant to 26 U.S.C. § 6020(b), for the amount of taxes, fines, or penalties, which may be owed by Mr. Stanford.

15. The United States moves to compel R. Allen Stanford to file his federal income tax return for tax year 2007, either as a “married filing separate” or as a joint return, should Susan Stanford choose to make such an election.¹⁰ Mr. Stanford should be ordered to file such return on or before April 15, 2009, by submitting the original return to Leo Carey, Internal Revenue Service, 1100 Commerce Street, Mail Code 5027DAL, Dallas, Texas 75242, and to serve a copy of the return on the undersigned attorney for the United States.

WHEREFORE the United States requests that the Court grant the Motions filed by the United States and enter an order that:

1. The United States on behalf of its agency, the Internal Revenue Service, shall be an intervening party in this case;
2. The Commissioner of the Internal Revenue Service may litigate to final, non-appealable decision, the consolidated U.S. Tax Court cases against R. Allen Stanford and Susan Stanford relating to their joint and several liability to the United States for unpaid federal income (1040) taxes for tax years 1999, 2000 and 2001. At its discretion and at any time, the IRS may immediately assess the deficiencies (together with all interest, additional amounts and statutory additions) determined by the Secretary against R. Allen Stanford and Susan Stanford relating to

¹⁰ The United States acknowledges that divorce proceedings commenced on November 5, 2007 in Susan Stanford v. R. Allen Stanford, Case # 200767703 in Harris County, Texas and trial was set for June 15, 2009.

their joint and several liability for unpaid federal income (1040) taxes for tax years 1999, 2000 and 2001, as permitted under 26 U.S.C. § 6871(a).

3. The IRS Office of Appeals may conduct a “Collection Due Process or Equivalent Hearing” in accordance with 26 U.S.C. §§ 6320 and 6330 relating to R. Allen Stanford and Susan Stanford’s unpaid federal income (1040) taxes for tax years 2002 and 2003. The IRS Office of Appeals may issue a notice of determination relating to R. Allen Stanford and Susan Stanford’s unpaid federal income (1040) taxes for tax years 2002 and 2003.

4. R. Allen Stanford shall file his federal income (1040) tax return for tax year 2007, either as a “married filing separate” (or as a joint return, should Susan Stanford choose to make such an election) on or before April 15, 2009, by delivering the originally-signed return to Leo Carey, Internal Revenue Service, 1100 Commerce Street, Mail Code 5027DAL, Dallas, Texas 75242, and by serving a copy on Manuel P. Lena Jr., U.S. Department of Justice, 717 N. Harwood, Suite 400, Dallas, Texas 75201; and

5. Grants to the United States such other and further relief to which it is entitled.

/s/ Manuel P. Lena Jr.
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CERTIFICATE OF CONFERENCE

IT IS HEREBY CERTIFIED that on March 13, 2009, I, Manuel P. Lena Jr., attorney for the United States on behalf of the Internal Revenue Service:

- 1) Discussed telephonically and emailed a copy of this motion to Susan Ayers, attorney for Ralph Janvey, the Receiver, and requested the Receiver's position on the U.S. Motion. Kevin Sadler, lead attorney for the Receiver, responded through Ms. Ayers that "attorneys for the Receiver are still conferring with the Receiver on the Motion and will inform the Court on Monday [3/16/09] of his position on the IRS Motion;" and
- 2) Discussed telephonically and emailed a copy of this motion to David Reece, attorney for the U.S. Securities and Exchange Commission, and requested the SEC's position on the U.S. Motion. Mr. Reece said that the Commission was considering the Motion and that it would advise the IRS of its position on the IRS Motion as quickly as possible.

/s/ Manuel P. Lena Jr.
Manuel P. Lena Jr.

CERTIFICATE OF SERVICE

On March 13, 2009, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. IT IS HEREBY CERTIFIED that service of the foregoing document has been made on 13 March, 2009, upon all persons and parties entitled to service, by electronic service and/or by another manner authorized by the Federal Rules of Civil Procedure.

/s/ Manuel P. Lena Jr.
Manuel P. Lena Jr.