

ORIGINAL

CASE NO. 2009-0213  
IN THE SUPREME COURT OF OHIO

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OHIO APARTMENT ASSOCIATION, GREENWICH APARTMENTS LTD.,  
AND D&S PROPERTIES,  
*Appellants,*

v.

RICHARD A. LEVIN, TAX COMMISSIONER,  
*Appellee.*

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ON APPEAL FROM THE BOARD OF TAX APPEALS  
CASE NO. 2006-0861

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APPELLANTS' BRIEF IN OPPOSITION TO  
APPELLEE'S MOTION TO STAY

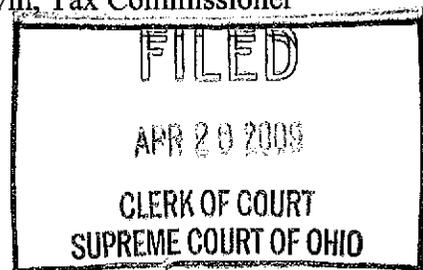
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Here we go again. In filing his Motion to Stay the briefing schedule, Appellee, Robert A. Levin, Tax Commissioner (the “Commissioner”), continues his efforts to delay or avoid a review of the substantive arguments underlying Appellants’ challenges to Department of Taxation Rules 5704-25-18 and 5703-25-10 (the “Rules”). However, the requested stay prejudices only Appellants because it would simply prolong the time until Appellants can be heard by this Court and because Appellants have already filed, and incurred the costs of preparing, their Merit Brief on the issues.

The Commissioner’s request for a stay would benefit only him. The request is based on his filing of a Motion to Dismiss on purported jurisdictional grounds. Despite the fact that this appeal has been pending before the Court since January, the Commissioner waited until two days before Appellants’ Merit Brief deadline to file his Motion to Dismiss. Appellants, therefore, had already incurred the fees and expenses associated with preparing the Merit Brief, which they filed in accordance with the Court’s briefing schedule.

The Court is equipped to accept filings in support of and in opposition to the Motion to Dismiss along with the merit briefing – and nothing in the Civil Rules or this Court’s Rules precludes the Court from doing so. Appellants do agree, however, that a stay on the briefing underlying the Commissioner’s cross-appeal is warranted in light of the Motion to Dismiss. The issues raised in the Commissioner’s Notice of Cross-appeal essentially mirror those raised in the Motion to Dismiss, so a denial of the Motion to Dismiss would realistically terminate the cross-appeal. Thus, any briefing on the cross-appeal would be duplicative and cause both parties to incur unnecessary additional costs.

Therefore, Appellants respectfully request that the Court deny the Commissioner’s Motion to Stay as it pertains to the issues raised by Appellants’ Notice of Appeal, but grant the

stay solely as to the Commissioner's Notice of Cross-appeal. The Commissioner should be required to submit his brief in response to Appellants' Merit Brief on May 6, 2009, in accordance with the Court's current schedule.

Respectfully submitted,

*Mark I. Wallach* By *Christy M. Wallach*  
*per consent*

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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing *Appellants' Brief in Opposition to Appellee's Motion to Stay Briefing* was served this 20th day of April, 2009, by First Class U.S.

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