

**UNITED STATES OF AMERICA, Plaintiff, vs. INDIANAPOLIS BAPTIST  
TEMPLE, DIXON, GREGORY JEROME, NBD BANK, INC., Defendants.**

**CAUSE NO. IP98-0498-C-B/S**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
INDIANA, INDIANAPOLIS DIVISION**

*2000 U.S. Dist. LEXIS 6568*

**February 10, 2000, Decided**

**DISPOSITION:** [\*1] Government's motion to modify the terms of the stay of execution of judgment pending appeal granted.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff motioned the court to modify the court's November 10, 1999 stay of execution of the judgment during the pendency of defendant church's appeal of the court's June 29, 1999 entry granting summary judgment in favor of the Government.

**OVERVIEW:** The Government motioned to modify a November 10, 1999 stay of execution of the judgment during the pendency of defendant's appeal of the June 29, 1999 entry granting summary judgment in favor of the Government. The Government requested the court to supplement its stay order by requiring defendant to file detailed, monthly financial statements with the court, prepare and file employer's quarterly tax returns with the court, and deposit an amount equal to its accruing federal employment tax liability into an escrow account. The court found that defendant's filing of monthly financial statements would have provided an effective supplemental means to monitor defendant's financial affairs. The court did not require defendant to file an IRS form, but it was to create an alternative type of schedule to report the same essential information. Defendant failed to assert or substantiate any claim that defendant's financial condition prevented it from tendering escrow deposits.

**OUTCOME:** The Government's motion to modify was granted; defendant was required to submit to the court monthly financial statements, submit a quarterly schedule disclosing information ordinarily covered by the IRS, and deposit into the court's escrow fund on a quarterly basis.

**CORE TERMS:** quarterly, deposit, monthly, federal tax, escrow, pending appeal, employment tax, real prop-

erty, tax liability, modification, pendency, prevail, stay of execution, financial condition, tax obligation, amount equal, stay order, administered, accruing, continued operation, federal employment tax, stay pending appeal, escrow account, requesting, successive, calculate, estimated, complying, religious, ministries

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For UNITED STATES OF AMERICA, plaintiff: HAROLD BICKHAM, ASST. U.S. ATTORNEY, INDIANAPOLIS, IN.

For INDIANAPOLIS BAPTIST TEMPLE, DIXON, GREGORY JEROME, defendants: ALBERT F CUNNINGHAM, ATTORNEY AT LAW, MONTGOMERY CREEK, CA.

For DIXON, GREGORY JEROME, defendant: GREGORY J DIXON, 19TH CONGRESSIONAL DISTRICT, INDIANAPOLIS, IN.

For NBD BANK, INC., defendant: STEVEN L YOUNT, ATTORNEY AT LAW, INDIANAPOLIS, IN.

**JUDGES:** SARAH EVANS BARKER, CHIEF JUDGE, United States District Court, Southern District of Indiana.

**OPINION BY:** SARAH EVANS BARKER

**OPINION:**

**ENTRY MODIFYING TERMS OF STAY OF  
EXECUTION OF JUDGMENT PENDING APPEAL**

Plaintiff, the United States of America (the "United States" or the "government") asks us to modify our No-

ember 10, 1999 stay of execution of the Judgment during the pendency of Indianapolis Baptist Temple's ("IBT") appeal of our June 29, 1999 Entry granting summary judgment in favor of the government. In our November 10, 1999 Entry, [\*2] we granted defendant IBT's request for a stay, subject to a number of express conditions designed to preserve IBT's real property, which represents the government's primary basis for collecting on its judgment. We emphasized in that entry that we would continue to monitor IBT's financial condition closely, noting that either party could request modification of the terms of our stay order should there be a change in circumstances. The government has now moved for such a modification, requesting that we supplement our stay order by requiring IBT to (1) file detailed, monthly financial statements with the Court, (2) prepare and file employer's quarterly employment tax returns with the Court (IRS Form 941), and (3) deposit an amount equal to its accruing federal employment tax liability into an escrow account administered by the Court. IBT opposes these additional conditions for a stay, claiming that the government's interests in IBT's property to satisfy its Judgment are sufficiently protected under the terms of the current stay order. IBT reasserts that its religious convictions prevent it from completing federal tax returns and from acknowledging that it or its workers (who receive [\*3] payments for their services) are "employers" or "employees," as defined by the United States tax code. Having considered the parties' assertions, we conclude that it is both appropriate and prudent to require IBT to file monthly financial statements with the Court, and to tender as escrow deposits (to the Court) amounts equal to its potential employment tax liability during the pendency of the appeal. These additional, reasonable conditions are fully warranted and provide protections to the government's interests pending appeal.

Our reasons for imposing these additional requirements are the following: first, IBT's filing of monthly financial statements with the Court will provide an effective supplemental means to monitor IBT's financial affairs, thus allowing the government to ascertain the extent of IBT's security to pay the Judgment, if affirmed on appeal. Indeed, IBT previously has filed financial statements with the Court when requesting a stay of execution of judgment, demonstrating that providing financial updates is a manageable undertaking, especially given the alternative -- immediate foreclosure on IBT's church, school and other property. Moreover, while the required monthly [\*4] inspections of IBT's property should provide the government some security in that interest, financial statements are a more direct means of determining whether any changed circumstances might warrant further modification of the stay terms. Of course, assuming the government prevails on appeal, satisfaction of its

judgment is not limited to IBT's real property, and updated monthly financial statements ensures that IBT's overall financial condition (which subsumes outlays for its real property) is monitored appropriately.

Second, the government correctly notes that execution of its judgment (assuming we had not ordered a stay) would have allowed it to foreclose on the federal tax liens on IBT's real property, which would likely have prevented IBT from continuing to operate and accruing additional tax obligations. Put another way, the government's interest may be eroded pending appeal if IBT continues accumulating tax obligations that the government will never collect, even if it prevails on appeal. Therefore, the government has requested that we require IBT to complete employment tax returns and to deposit into escrow an amount equal to the employment tax obligations accruing during [\*5] the pendency of the appeal.

n1

n1 We anticipate in any event that if the government prevails on appeal (and especially if IBT then petitions the Supreme Court for certiorari), it would request modification of our final judgment to obtain prospective injunctive relief to prevent IBT from continued operation and accumulation of unpaid tax obligations. See *26 U.S.C. § 7402*.

IBT rejoins that since it has appealed the very issue of whether, given its religious nature, it must comply with federal tax laws, this Court should not require it to complete IRS forms and deposit potential tax liability into an escrow account. However, in making this argument, IBT mis-perceives the nature of provisional escrow payments in the context of a stay pending appeal. By estimating tax liability in the event IBT does not prevail on appeal, and by depositing the amount of that conditional liability into an account administered by this Court, IBT neither submits to IRS authority nor acknowledges that it and [\*6] its members are "employers" and "employees" under federal tax law. On the contrary, the purpose of such deposits in escrow with the Court is simply to prevent erosion of the government's interest pending appeal, with the full understanding that IBT's payments are conditional only and that IBT, should it succeed on appeal, would stand to receive the entire escrow amount back, with interest, never having been subjected to federal tax laws. n2

n2 IBT's own actions in complying with the current conditions of the stay pending appeal demonstrate this principle. IBT has obtained a supersedeas bond in the amount of its approximately \$ 11,000 in cash reserves, a condition we

imposed to protect the government's interest in those funds while execution of judgment is stayed pending appeal. By posting this bond and complying with the other terms of the stay, IBT in no respect has acknowledged liability under federal tax laws, nor has any tax liability judgment been executed against it, a fact further evidenced by IBT's continued operation.

[\*7]

Given the issues raised in its defense of this lawsuit, we understand IBT's reticence to complete an "official" IRS Form 941 (Employer's Quarterly Federal Employment Tax Return). We will not require the preparation and filing of IRS Forms 941 as such. Although Form 941 would no doubt provide the most efficient method to measure IBT's potential tax obligation, the format of IBT's quarterly submission is unimportant, provided that IBT creates some suitable, alternative type of schedule to report the same essential information requested on Form 941. Thus, for example, if IBT elects not to complete Form 941, it must nonetheless identify those "workers in the ministries" and "members of the Church" who receive "moneys," "offerings," or "gifts" from IBT and the amounts given to each of them. n3 See IBT's Resp. Pl.'s Mot. Modification of Stay at 6. IBT shall also calculate its contingent tax obligation and file that submission with the Court on a quarterly basis. Based on those quarterly calculations, IBT shall deposit estimated quarterly payments into an interest-bearing account administered by the Court. Counsel for IBT has failed to assert or substantiate any claim that IBT's financial [\*8] condition prevents it from tendering these escrow deposits; such an argument would strike us as seriously wanting in any event, as IBT continues to generate funds from its operations and need only withhold a portion of existing and future "moneys," which IBT presently either gives to "workers" or uses itself. If IBT requires assistance in calculating its potential tax obligation, the parties shall select an appropriate counselor or request the Court to appoint an advisor, the costs of whose services must be

borne by IBT. These submissions to the Court must also be verified as to their truthfulness and accuracy.

n3 IBT claims that "moneys received by the workers in the ministries as a portion of the tithe returned to them from God is not compensation as wages or salaries, but is a gift from God." See IBT's Resp. Pl.'s Mot. Modification of Stay at 6. While IBT certainly is not required to abandon at this point its definitions of "moneys" and "workers," it is required to identify the "workers" and the amount of "moneys" received for purposes of calculating potential tax liability.

[\*9]

In sum, the government's motion to modify the terms of the stay of execution of judgment pending appeal is well-taken, and thus we shall grant it. Accordingly, in addition to the conditions of the stay explicated in and imposed by this Court's November 10, 1999 Entry, we hereby also require IBT to (1) submit to the Court monthly financial statements, the first such report being due within 10 days after 3/31/00 to reflect the March 2000 financial activity, with successive reports to follow on a similar monthly schedule, (2) submit to the Court a quarterly schedule disclosing information ordinarily covered by IRS Form 941 (or Form 941 itself) and calculate its potential federal employment tax obligation, (the first such report to cover the first 3 months of 2000 and is due within 10 days following 3/31/00, and all successive reports shall follow on a similar, quarterly schedule) and (3) deposit into the Court's escrow fund on a quarterly basis (according to the same schedule set out under condition 2 above) the amount equal to IBT's estimated, quarterly employment tax obligation that arguably continues to accrue during the pendency of its appeal.

It is so ORDERED this day [\*10] of April 2000.

SARAH EVANS BARKER, CHIEF JUDGE

United States District Court

Southern District of Indiana