

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

Civil Action No. 5:12-CV-186 (Lead); 3:14-CV-504 (Consolidated)

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIC APPELBAUM,

Defendant.

CLAUDIA APPELBAUM,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

SCHEDULING ORDER

THIS MATTER is before the Court on its own Motion.

On February 17, 2016, the Court and counsel for all parties conducted a status conference to identify and discuss a schedule resolving the remaining issues in the above-captioned consolidated cases: *United States v. Eric Appelbaum*, 5:12-CV-186 (Lead)(“TFRP Case”) and *Claudia Appelbaum v. United States*, 3:14-CV-504 (“Wrongful Levy Case”). At the conclusion of the status conference, the Court ordered the parties to propose a schedule. The parties jointly submitted a proposed schedule by electronic mail

dated March 14, 2016. The Court accepts and adopts the recommendations in that schedule, and orders as follows:

1. If the United States files a Notice of Appeal of the final judgment in the TFRP Case by April 4, 2016, the Court will stay all proceedings in the consolidated cases until the Fourth Circuit resolves the appeal.
2. If the United States does not file a Notice of Appeal by April 4, 2016, the following schedule will govern resolution of the remaining issues in the consolidated cases.
 - a. Resolution of the Appelbaums' Motion for Costs and Attorney's Fees (Doc. No. 66) ("Motion for Costs and Fees"). The United States will file its response to the Motion for Costs and Fees by April 18, 2016. The Appelbaums' reply in support of their Motion for Costs and Fees will be due on May 2, 2016.
 - b. Disposition of the Levied Funds at Issue in the Wrongful Levy Case. The parties have agreed that, if the United States does not appeal, the United States must return the funds that are the subject of the Wrongful Levy Case. The parties will submit a consent judgment regarding return of the funds, and a related motion to approve, by April 11, 2016.
 - c. Disposition of Claudia Appelbaum's Claim Under 26 U.S.C. § 7426(h) for Damages in the Wrongful Levy Case. On May 2, 2016, the parties concurrently will file briefs setting forth their respective positions on the scope of damages that Mrs. Appelbaum may claim under her § 7426(h) claim and suggesting a procedure to resolve the § 7426(h) claim. Each party may file a responsive brief by May 16, 2016.

d. Eric Appelbaum's Demand for Return of Wrongfully Withheld or Levied Social Security Payments and Tax Refund Offset Proceeds. Eric Appelbaum seeks return of certain Social Security payments and tax refund amounts that the Internal Revenue Service applied to the unlawful assessment that was overturned in the TFRP Case. It is the position of the United States that Eric Appelbaum is not entitled to the return of those amounts through these proceedings. On May 2, 2016, the parties will concurrently submit briefs on the issue of whether Appelbaum is entitled to a refund of the social security and tax refund amounts through these proceedings or without further, separate proceedings as a consequence of the Court's final disposition of the TFRP Case. Responsive briefs will be due on May 16, 2016.

Signed: March 28, 2016



Richard L. Voorhees
United States District Judge

