

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

NorCal Tea Party Patriots, <i>et al</i> ,	:	
	:	Case No. 1:13-cv-341
Plaintiffs,	:	
	:	Judge Susan J. Dlott
v.	:	
	:	Order Extending Stay
The Internal Revenue Service, <i>et al.</i> ,	:	
	:	
Defendants.	:	

This matter is before the Court on the United States’ Motion to Extend Stay of Execution of Order Compelling Discovery, as Modified (Doc. 185). The Government has determined to seek immediate appellate review of two related discovery Orders (Docs. 147 and 183). The Government states its intention to file a petition for writ of mandamus with the Sixth Circuit Court of Appeals on or before July 30, 2015. It seeks the Court to stay the execution of the discovery Orders until fourteen days after the final resolution of the appellate proceeding.

The factors regulating the issuance of a stay are the same factors traditionally regulating the issuance of a preliminary injunction. *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). The factors are as follows: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *see also Profs. Direct Ins. Co. v. Wiles, Boyle, Burkholder & Bringardner Co., LPA*, No. 2:06-cv-240, 2008 WL 5378362, at \*1 (S.D. Ohio Dec. 24, 2008) (applying *Hilton* to a request for stay of production of discovery). “The probability of success that must be demonstrated is inversely proportional to the amount of

irreparable injury plaintiffs will suffer absent the stay.” *Mich. Coal. of Radioactive Material Users*, 945 F.2d at 153. The Court finds that a stay is warranted here. The Government has not made a strong showing of likelihood of success on appeal, but it will suffer irreparable harm and the third parties whose tax return information is produced will suffer irreparable harm if the Government produces third party tax return information which the Sixth Circuit later determines should have remained confidential.

The Court urges the Government to proceed in an expeditious fashion. The parties have been litigating this discovery issue since early March 2015. The Court issued the initial Order Compelling Discovery (Doc. 147) on April 1, 2015. The Government then sought a reconsideration of the Order Compelling Discovery and a stay of the Order Compelling Discovery while it determined whether to seek appellate review. (Doc. 151.) The Court granted an initial thirty-day stay on June 16, 2015. (Doc. 183.) The Government already has had ample time to prepare a petition for writ of mandamus. It does not require an additional two weeks.

Accordingly, the Court will extend the stay for a period of seven days from the date of this Order to enable the Government to file a petition for mandamus with the Sixth Circuit Court of Appeals. However, the stay will be automatically extended for an additional sixty days if the Government timely files the petition for mandamus within seven days. The Government may move the Court for further extension of the stay for good cause. Additionally, the stay will be automatically dissolved within seven days of the resolution of the appellate proceeding.

IT IS SO ORDERED.

S/Susan J. Dlott  
Judge Susan J. Dlott  
United States District Court