

**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS**

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LINDA M. HARRINGTON, PETER D.	:	TAX COURT OF NEW JERSEY	
HARRINGTON, JOANNE ROTH,	:	DOCKET NO. 009529-2011	
OSCAR OVIEDO, MARTHA ORTIZ,	:	DOCKET NO. 000622-2011	
GERARD SOLAS, MELANIE JACOB,	:	DOCKET NO. 007022-2011	
ERIC K. JACOB, ROBERT K. SPACE,	:	DOCKET NO. 007023-2011	
NANCY M. SPACE, ALAN MOONEY,	:	DOCKET NO. 007024-2011	
and MARY MOONEY,	:	DOCKET NO. 007025-2011	
	:	DOCKET NO. 007027-2011	
	:	DOCKET NO. 007052-2011	
Plaintiffs,	:		
	:	MEMORANDUM OPINION	
v.	:		
	:		
DIRECTOR, DIVISION OF TAXATION,	:		
and STATE OF NEW JERSEY,	:		
DEPARTMENT OF THE TREASURY,	:		
DIVISION OF STATE LOTTERY,	:		
	:		
Defendants.	:		
-----x			

Decided: December 13, 2016

William D. Grand, Esq., for plaintiffs (Greenbaum, Rowe, Smith & Davis, LLP, attorneys, Mr. Grand and Steven B. Gladis, Esq., on the briefs)

Thu N. Lam, Deputy Attorney General, for defendant Division of State Lottery (Christopher S. Porrino, Attorney General of New Jersey, attorney)

Ramanjit K. Chawla, Deputy Attorney General, for defendant Director, Division of Taxation (Christopher S. Porrino, Attorney General of New Jersey, attorney)

DeALMEIDA, P.J.T.C.

This is the court's opinion with respect to two motions. Plaintiffs move to enforce litigant's rights pursuant to R. 1:10-3. They seek a Judgment specifying the amount of New Jersey gross income tax and interest they are entitled to receive as refunds for tax year 2009 from defendant

Director, Division of Taxation (the “Director”), and compelling the issuance of the refunds within 30 days. The Director opposes plaintiffs’ motion and, in the event that plaintiffs are successful with their motion, cross-moves for a stay of any refunds until all claims alleged by plaintiffs in these matters are resolved. For the reasons explained more fully below, plaintiffs’ motion is granted and defendant’s cross-motion is denied.

I. Finding of Fact and Procedural History

A complete recitation of the facts and procedural history of these matters is set forth in the court’s opinion granting partial summary judgment to plaintiffs. Harrington v. Director, Div. of Taxation, 29 N.J. Tax 370 (Tax 2016). That opinion need not be repeated here. It will suffice for purposes of this motion to provide the following summary.

Seven of the plaintiffs are residents of New Jersey who, along with three co-workers, on March 3, 2009, won a New Jersey Lottery Mega Millions lottery prize of \$216 million. They chose to receive a lump sum payment of approximately \$140 million. After the prize winnings were split ten ways, each plaintiff received approximately \$14 million.¹

When plaintiffs won their lottery prize and claimed their winnings, N.J.S.A. 54A:6-11 excluded New Jersey lottery winnings from income subject to New Jersey gross income tax. At the time that plaintiffs purchased their winning ticket, this fact was advertised in the brochures and on the website of the Division of State Lottery. Officials with that agency admitted that these representations were intended to generate lottery ticket sales and to exploit a perceived business advantage over neighboring States that operated lotteries, the winnings from which would be subject to gross income tax for New Jersey residents.

¹ An additional five plaintiffs are spouses of the lottery winners, with whom they file joint New Jersey gross income tax returns. The twelve plaintiffs are referred to collectively as “plaintiffs” in this opinion.

On June 29, 2009, the Legislature enacted a statute imposing for the first time in the State's history New Jersey gross income tax on New Jersey lottery "winnings from a prize in an amount exceeding \$10,000" L. 2009, c. 69. The statute took effect immediately and applies "to taxable years beginning on or after January 1, 2009." L. 2009, c. 69, §5.

On or about April 15, 2010, plaintiffs timely filed 2009 New Jersey gross income tax returns, reporting their New Jersey Lottery winnings in excess of \$10,000 as taxable income. Although plaintiffs disputed application of the amendment to N.J.S.A. 54A:6-11 to their New Jersey Lottery winnings, they paid the gross income tax reflected on their returns.

On or about May 20, 2010, plaintiffs filed amended 2009 New Jersey gross income tax returns. The amended returns excluded plaintiffs' New Jersey Lottery winnings from taxable income. Plaintiffs have various legal theories for why the amendment to N.J.S.A. 54A:6-11 does not apply to their lottery winnings. Each unmarried plaintiff and plaintiff couple sought a refund of approximately \$1.49 million dollars in gross income tax paid with their original returns.

By letters dated July 9, 2010 and August 2, 2010, the Director denied plaintiffs' refund requests.

On August 10, 2010, plaintiffs timely sought an administrative appeal of the Director's denials through the filing of written protests with the Division of Taxation.

On February 7, 2011, the Director rejected plaintiffs' administrative appeals and issued final determinations upholding the denial of their refund requests.

On April 1, 2011, plaintiffs filed a Complaint in the Superior Court, Law Division, Ocean County. Plaintiffs name as defendants the Director, Division of Taxation and the Division of State Lottery. In the First Count of the Complaint, plaintiffs allege that application of the amendment to N.J.S.A. 54A:6-11 to plaintiffs' lottery winnings violates the manifest injustice doctrine. In the

Second Count of the Complaint, plaintiffs allege that application of the amendment to N.J.S.A. 54A:6-11 to their lottery winnings violates the due process, equal protection and other clauses of the United States and New Jersey Constitutions. Included in the Second Count is a claim that assessment of the tax on plaintiffs' New Jersey lottery winnings would violate the square corners doctrine. The Third Count of the Complaint alleges a breach of contract claim.

On April 8, 2011, each unmarried plaintiff and plaintiff couple filed a Complaint in this court challenging the Director's final determination denying their respective refund claims.

On June 24, 2011, the Hon. Craig L. Wellerson, J.S.C., granted defendants' motion to transfer the Superior Court Complaint to this court. See N.J.S.A. 2B:13-2(b).

On June 18, 2015, plaintiffs filed a First Amended Complaint in each pending matter. The First Amended Complaints contain Count I (Manifest Injustice), Count II (Violations of the United States and New Jersey Constitutions) and Count III (Breach of Contract).

On March 18, 2016, plaintiffs moved for summary judgment on Count II (Violations of the United States and New Jersey Constitutions) and Count III (Breach of Contract) of their First Amended Complaints.

On April 22, 2016, defendants opposed plaintiffs' motion and cross-moved for summary judgment on all Counts of the First Amended Complaints, including Count I (Manifest Injustice). While plaintiffs contend that for purposes of their manifest injustice claims there are no disputed material facts with respect to plaintiffs' reliance on the law as it existed when they purchased their ticket and claimed their prize, they contend that summary judgment should be denied on their manifest injustice claims to allow for further discovery.

On September 26, 2016, the court granted partial summary judgment in favor of plaintiffs and partial summary judgment against defendants with respect to plaintiffs' claims, embodied in

Count II of the First Amended Complaints, that application of the amendment to N.J.S.A. 54A:6-11 to plaintiffs' New Jersey lottery winnings violates the square corners doctrine. According to the court, under that doctrine the State's obligation "to act fairly and with compunction" when dealing with the public "includes abiding by the representations it made to the public to encourage the sale of lottery tickets prior to the June 29, 2009 extension of the gross income tax to certain New Jersey lottery winnings." See Harrington, supra, 29 N.J. Tax at 379. The court reserved decision on the remaining aspects of the parties' cross-motions.

On September 26, 2016, the court entered an Order granting summary judgment, in part, and denying summary judgment, in part, on the square corners claims. According to the September 26, 2016 Order, the court:

1. ORDERED that Plaintiffs' motion for partial summary judgment be and hereby is GRANTED, in part, to the extent that the court concludes that the Director, Division of Taxation's assessment of New Jersey gross income tax on the New Jersey lottery winnings received by plaintiffs in 2009 violates the square corners doctrine. The grant of partial summary judgment in favor of plaintiffs on their square corners doctrine claims is a sufficient basis for reversal of the final determinations of the Director, Division of Taxation denying plaintiffs' requests for a refund of New Jersey gross income tax for tax year 2009; and
2. IT IS FURTHER ORDERED that defendants' cross-motions for summary judgment be and hereby are DENIED, in part, to the extent that those motions concern the square corners doctrine.

Notably, the September 26, 2016 Order did not specifically reverse the Director's final determinations denying plaintiffs' refund claims. Nor did the Order expressly compel the Director to refund any amount to plaintiffs.

The Director did not seek interlocutory appellate review of the court's September 26, 2016 Order. Nor did the Director appeal a final Judgment entered on September 26, 2016 in Leger v. Director, Div. of Taxation, 29 N.J. Tax 354 (Tax 2016), in which the court held that application of

the amendment to N.J.S.A. 54A:6-11 to taxpayers similarly situated to plaintiffs violated the square corners doctrine. In Leger, the court also determined that application of the statute to the taxpayers in that case violated the manifest injustice doctrine. Plaintiffs' manifest injustice claims in the present matter have not yet been resolved.

On November 10, 2016, plaintiffs moved to enforce litigant's rights pursuant to R. 1:10-3, seeking a Judgment setting forth the amounts of refunds of gross income tax, plus interest, due to plaintiffs, and ordering the Director to refund those amounts within 30 days. According to plaintiffs, they are due the following amounts, which include the amount of gross income tax paid, interest calculated through December 2, 2016, the return date of plaintiffs' motion, and the per diem interest rate thereafter:

(a) To Linda M. Harrington and Peter D. Harrington: \$1,852,532.30, plus per diem interest of \$171.62 from December 3, 2016, through December 31, 2016; plus per diem interest of \$178.12 from January 1, 2017 through December 31, 2017; plus interest thereafter until paid in accordance with N.J.S.A. 54A:9-7(f), N.J.S.A. 54:48-2, and N.J.A.C. 18:35-9.2;

(b) To Joanne Child (formerly Joanne Roth): \$1,840,586.30, plus per diem interest of \$171.62 from December 3, 2016, through December 31, 2016; plus per diem interest of \$178.12 from January 1, 2017 through December 31, 2017; plus interest thereafter until paid in accordance with N.J.S.A. 54A:9-7(f), N.J.S.A. 54:48-2, and N.J.A.C. 18:35-9.2;

(c) To Oscar Oviedo and Martha Ortiz: \$1,850,051.40, plus per diem interest of \$171.62 from December 3, 2016, through December 31, 2016; plus per diem interest of \$178.12 from January 1, 2017 through December 31, 2017; plus interest thereafter until paid in accordance with N.J.S.A. 54A:9-7(f), N.J.S.A. 54:48-2, and N.J.A.C. 18:35-9.2;

(d) To Gerard Solas: \$1,850,594.80, plus per diem interest of \$171.62 from December 3, 2016, through December 31, 2016; plus per diem interest of \$178.12 from January 1, 2017 through December 31, 2017; plus interest thereafter until paid in accordance

with N.J.S.A. 54A:9-7(f), N.J.S.A. 54:48-2, and N.J.A.C. 18:35-9.2;

(e) To Melanie Jacob and Eric K. Jacob: \$1,853,770.30, plus per diem interest of \$171.62 from December 3, 2016, through December 31, 2016; plus per diem interest of \$178.12 from January 1, 2017 through December 31, 2017; plus interest thereafter until paid in accordance with N.J.S.A. 54A:9-7(f), N.J.S.A. 54:48-2, and N.J.A.C. 18:35-9.2;

(f) To Robert K. Space and Nancy M. Space: \$1,844,588.10, plus per diem interest of \$171.62 from December 3, 2016, through December 31, 2016; plus per diem interest of \$178.12 from January 1, 2017 through December 31, 2017; plus interest thereafter until paid in accordance with N.J.S.A. 54A:9-7(f), N.J.S.A. 54:48-2, and N.J.A.C. 18:35-9.2;

(g) To Alan Mooney and Mary Mooney: \$1,848,447.50, plus per diem interest of \$171.62 from December 3, 2016, through December 31, 2016; plus per diem interest of \$178.12 from January 1, 2017 through December 31, 2017; plus interest thereafter until paid in accordance with N.J.S.A. 54A:9-7(f), N.J.S.A. 54:48-2, and N.J.A.C. 18:35-9.2.

Plaintiffs argue that even though the September 26, 2016 Order is interlocutory, it effectively reversed the Director's final determinations denying plaintiffs' refund claims, and rendered the refunds due immediately. According to plaintiffs, the unresolved claims might provide additional grounds for the reversal of the Director's final determinations, but would not, even if decided in the Director's favor, vitiate the court's September 26, 2016 Order with respect to the square corners doctrine. In addition, plaintiffs' unresolved breach of contract claim might provide for the award of damages beyond the gross income tax and interest refunded to plaintiffs under the September 26, 2016 Order, but could not provide a basis to reverse that Order.

The Director opposes plaintiffs' motion. While the Director does not contest plaintiffs' calculation of the amount of gross income tax, plus interest, to which they are entitled under the September 26, 2016 Order, he argues that the Order is not immediately enforceable. It is the

Director's position that plaintiffs are not entitled to the award of a refund until all claims raised in the First Amended Complaints are resolved by this court. In addition, the Director cross-moves for a stay, arguing that in the event that the court grants plaintiffs' motion, any Judgment entered by the court awarding refunds to plaintiffs should be stayed until all claims raised in the First Amended Complaints are resolved.²

On December 2, 2016, the court heard oral argument from counsel.

II. Conclusions of Law

A. Plaintiffs' Motion to Enforce Litigant's Rights.

Plaintiffs seek relief pursuant to R. 1:10-3. As noted above, a close examination of the September 26, 2016 Order reveals that the court did not expressly reverse the final determinations at issue here. Nor did the court order the Director to issue a refund to plaintiffs. There has, therefore, been no failure on the part of the Director to comply with the court's Order. Although the rule addresses civil contempt, our Supreme Court has interpreted the rule as one designed to provide relief to litigants, whether or not a party has willfully violated a court Order. In re: N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 17 (2015). "[C]ourts have recognized that 'demonstration of a mens rea, willful disobedience and lack of concern for the order of the court, is necessary for a finding of contempt, but irrelevant in a proceeding designed simply to enforce a judgment on a

² On September 26, 2016, in a companion case, Milligan v. Director, Div. of Taxation, 29 N.J. Tax 381 (Tax 2016), the court issued an Opinion and Order granting partial summary judgment with respect to the application of the amendment to N.J.S.A. 54A:6-11 to taxpayers similarly situated to plaintiffs. The taxpayers in Milligan later moved for an Order enforcing litigant's rights to compel the refund of the gross income tax they paid on their New Jersey lottery winnings, plus interest. Those taxpayers, who receive annual installments of New Jersey lottery winnings, also sought declaratory relief precluding the assessment of the tax on New Jersey lottery winnings received by them in future tax years, as well as the award of attorneys fees for what they characterize as the Director's willful disregard of the court's Order. The Director opposed the taxpayers' motion in that matter and cross-moved for a stay in the event that the taxpayers are granted relief. The Milligan motions will be addressed in a separate opinion.

litigant's behalf.” Ibid. (quoting Lusardi v. Curtis Point Prop. Owners Ass'n, 138 N.J. Super. 44, 49 (App. Div. 1975) (emphasis omitted). The “Appellate Division correctly held that upon a litigant’s application for enforcement of an injunctive order, relief should not be refused merely because the violation was not willful.” Department of Health v. Roselle, 34 N.J. 331, 347 (1961). “The scope of relief in a motion in aid of litigant’s rights is limited to remediation of the violation of a court order.” Abbott v. Burke, 206 N.J. 332, 371 (2011)(citations omitted).

The validity of the September 26, 2016 Order is not affected by its interlocutory nature. The court concluded that the square corners doctrine is a sufficient basis on which to reverse the Director’s denial of plaintiffs’ refund requests. There may be other grounds on which plaintiffs are entitled to relief. As was the case in Leger, supra, the denial of plaintiffs’ refund requests may constitute a manifest injustice, warranting reversal of the Director’s final determinations. In addition, plaintiffs may establish a breach of contract by defendants, justifying the award of damages, including, and perhaps beyond, the amount of gross income tax they paid on their lottery winnings. Alternatively, the Director may prevail on all unresolved claims asserted in the First Amended Complaints. In either case, the September 26, 2016 Order will remain in effect and plaintiffs will be entitled to a refund of the gross income tax they paid on their lottery winnings, plus interest.

There is no legal basis for refraining from entering a Judgment directing the issuance of a refund to plaintiffs. They have established that they are entitled to relief under the square corners doctrine. The Director has cited no statute or legal precedent precluding the award of a gross income tax refund based on this court’s grant of partial summary judgment in favor of taxpayers.

N.J.S.A. 54A:9-10(a) provides that a taxpayer whose request for a refund of gross income tax is denied by the Director may seek review of the Director’s decision in this court in accordance

with the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1, et seq. Such an appeal is the “exclusive remedy available to any taxpayer for review of a decision of the director with respect to the determination of the liability of the taxpayer” for gross income tax. N.J.S.A. 54A:9-10(c).

In addition, N.J.S.A. 54A:9-10(d) provides as follows:

Credit, refund or abatement after review. If the amount of a deficiency determined by the director is disallowed in whole or in part, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefore, or, if payment has not been made, shall be abated.

Nothing in N.J.S.A. 54A:9-10(d) provides that a decision of this court awarding a refund of gross income tax is not effective until final Judgment is entered by this court or until any appeal, should one ultimately be filed, is fully resolved.

In contrast, N.J.S.A. 54:3-27.2, which applies only in the local property tax context, provides that “in the event that a taxpayer is successful in an appeal from an assessment on real property, the respective taxing district shall refund any excess taxes paid, together with interest thereon from the date of payment . . . within 60 days of the date of final judgment.” N.J.S.A. 54:3-27.2. This statute has been interpreted to require the municipality to issue a refund of local property taxes only after the conclusion of any appeal from a Tax Court Judgment reducing an assessment. Universal Folding Box Co. v. City of Hoboken, 362 N.J. Super. 429 (App. Div. 2003). Thus, in the local property tax context, a motion to compel a refund is premature prior to final Judgment of the Tax Court, including the resolution of any appeal (or expiration of the time to appeal if no appeal is filed). Ibid. There is no legal precedent interpreting N.J.S.A. 54A:9-10(d) in a similar fashion.

Moreover, a decision of the Director assessing gross income tax

shall become final upon the expiration of the period specified in subsection (a) for filing a complaint with the tax court, if no such

complaint has been filed within such time, or if such complaint has been duly made, upon expiration of the time for all further appeals, or upon the rendering by the director of a decision in accordance with the mandate of the tax court or the courts on appeal.

[N.J.S.A. 54A:9-10(e).]

This statute is consistent with N.J.S.A. 54:49-18(a), a provision of the State Uniform Tax Procedure Act, which provides that the filing of a protest of a gross income tax assessment with the Director stays collection of the assessment, and N.J.S.A. 54:51A-15(d), which provides that the filing of a Complaint in Tax Court “shall stay the collection of the tax at issue therein”

It is plain that the Legislature established protections for a taxpayer challenging an assessment of gross income tax. Whether in the context of an administrative appeal before the Director, or a judicial appeal in this court, collection of an assessment of gross income tax is, in effect, stayed until a final determination of the taxpayer’s tax liability. The Legislature, however, enacted no statutory provision effectively staying the award of a refund of gross income tax when a judicial determination has been made in favor of the taxpayer. This court has to conclude that the Legislature, having enacted detailed statutory provisions staying an assessment of gross income tax when the assessment is challenged by a taxpayer, was aware that a taxpayer might also challenge the denial of a request to refund gross income tax, and enacted no statute staying the award of a refund until final Judgment is entered by this court.

The court, therefore, will enter Judgment reversing the final determinations at issue here and compelling the refund of gross income tax, plus interest, to plaintiffs.

B. The Director’s Cross-Motion for a Stay.

The standards for entry of stay are set forth in Crowe v. De Gioia, 90 N.J. 126, 133 (1982). The court must weight several factors, including whether a stay is necessary to prevent irreparable harm, whether the party seeking a stay is likely to succeed on the legal rights asserted, and whether

a balancing of the relative hardships to the parties of granting or denying relief favors entry of a stay. Id. at 132-34. Each factor is examined in turn.

(1) Prevention of Irreparable Harm.

As our Supreme Court has explained, “[h]arm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” Id. at 132-33. The Director’s moving papers do not contain a statement of the harm that would be visited upon the State in the absence of a stay. Nor are the Director’s moving papers supported by an Affidavit explaining the State’s financial situation, the steps that would be necessary to satisfy a Judgment compelling a refund to plaintiffs, or the impact that compliance with such a Judgment would have on the State. Simply put, there is no suggestion, let alone proof, of a threat of irreparable harm to the State if the Director is compelled to return to plaintiffs the gross income tax they paid on their New Jersey lottery winnings, plus interest.

At oral argument on the motions, the Director argued that it is possible that after receipt of a refund the taxpayers could declare bankruptcy, effectively precluding the Director from recovering the refunded amounts should the Director ultimately file a successful appeal in this matter. (The court notes that the Director has not stated that he intends to file an appeal after the resolution of all claims asserted in this matter, did not seek interlocutory appellate review of the September 26, 2016 Order, and did not file an appeal in Leger, supra). There are two significant flaws in this argument. First, the prospect of plaintiffs filing for bankruptcy after receiving refunds, or at any point in time, is entirely speculative. There is no suggestion in the record that plaintiffs do not have the financial means to satisfy their gross income tax obligations should the Director’s position ultimately be upheld on appeal. To the contrary, plaintiffs recently won a significant amount of money in a New Jersey lottery drawing. While luck at the lottery, even when a large

prize is awarded, does not necessarily portend a lifetime of financial stability, the Director produced no evidence suggesting that plaintiffs are at risk of financial ruin.

Second, as explained above, the Legislature has enacted statutes effectively staying the collection of gross income tax assessed against a taxpayer while administrative and judicial hearing are pending. Thus, in those instances in which a taxpayer is assessed a tax, as opposed to where a taxpayer pays the tax and seeks a refund, the Director always faces the risk that the collection of the tax will be stymied by a bankruptcy filing after conclusion of the legal challenges to the assessment. Yet, the Legislature has enacted statutes staying collection until all legal challenges are final. Plaintiffs elected to pay significant amounts of gross income tax for tax year 2009 that they believed were not legally due and to thereafter seek a refund. Having prevailed on one of their legal claims challenging the tax, plaintiffs should not now be put at a disadvantage as compared taxpayers who do not pay a tax that is due, challenge a subsequent assessment of the unpaid tax, and who do not have to pay the tax until a final Judgment has been issued against them. Those taxpayers have possession of their funds, insulated from collection efforts, for the duration of their legal challenges even though they may ultimately be unable to satisfy the assessment.

The first factor of the Crowe test has not been met.

(2) Likelihood of Success on the Merits.

There is curiously little in the Director's moving papers on this critical point. The Director does not express an intention to seek appellate review of the court's square corners decision. Interlocutory appellate review of the September 26, 2016 Order was not sought. No appeal was filed in Leger, supra, in which this court entered a final Judgment in favor of the taxpayers based, in part, on application of the square corners doctrine in circumstances quite similar to those presented here. Even if the court were to assume that the Director ultimately will seek appellate

review of a Judgment concerning plaintiffs' square corners claims, the Director advanced no argument that he is likely to succeed on the merits of any such appeal. The Director's moving papers do not even suggest that the court's decision on the square corners doctrine is incorrect.

The Director's argument is based on the equitable contention that a refund should not be granted until all claims raised by plaintiffs in their First Amended Complaints are resolved. The Director relies on the holding in Universal Box, *supra*, in support of his position. Yet, Universal Box is based on N.J.S.A. 54:3-27.2, which applies only in the local property tax context, and which, in this court's view, undermines the Director's position. N.J.S.A. 54:3-27.2 evidences the fact that the Legislature provided for an effective stay on the refund of taxes disputed in judicial proceedings until after entry of final Judgment and conclusion of all appeals, if filed, only in the context of local property taxes. No parallel provision was enacted by the Legislature in the statutes addressing the gross income tax or in the State Uniform Tax Procedure Law. It appears that the Legislature made a tax policy decision not to stay the issuance of refunds in the gross income tax context. The second Crowe factor, therefore, is not satisfied.

(3) Balancing of the Hardships.

The Director produced no evidence establishing the hardship the State would endure if plaintiffs are awarded refunds of gross income tax, plus interest. The hardship to plaintiffs in the absence of a refund is evident. In 2010, plaintiffs voluntarily reported income they believed was not legally subject to gross income tax. Shortly thereafter, they sought refunds of the tax they paid. More than six year later, plaintiffs obtained a judicial determination that the assessment of gross income tax on their New Jersey lottery winnings violates the square corners doctrine. They have been deprived of their money for more than six years. While interest accrues on the refunds at the lawful rate, plaintiffs contend that they could have earned a greater return on their money had they

made prudent investments during the years that their judicial challenges were pending. Moreover, plaintiffs have been denied the use and enjoyment of the money that they paid to the Director, the amount of which exceeds \$1.4 million for each plaintiff or plaintiff couple. There is no valid reason they should continue to be denied possession of their money while the remaining claims alleged in their First Amended Complaints are resolved.³

Having examined each of the Crowe factors and given appropriate weight to the competing considerations arising from the Director's cross-motion, the court concludes that a stay the Judgment issued today is not warranted. Although plaintiffs' refunds are due immediately, the court will order the refund be made within thirty days in order to permit the Director to seek appellate relief should he elect to do so.

³ The court makes no findings with respect to whether plaintiffs suffered monetary damages as a result of not having use of the money they paid to the Director. The existence and measure of any such damages are elements of plaintiffs' pending breach of contract claims.