APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, Plaintiff, v.	) E-FILED) 25 February 2011)))
ROBERT K. ZABKA, DEBRA ZABKA, BROOKSTONE HOSPITALITY LIMITED PARTNERSHIP, ANTIQUES LIMITED PARTNERSHIP, ZFP LIMITED PARTNERSHIP PRARIE STATE BANK & TRUST, N.A., FIRST MID-ILLINOIS BANK & TRUST, N.A., BANK OF AMERICA, N.A., and ELEOS, LLC, Defendants,	) Case No. 10-1078))))))))))))

ORDER

Now before the Court is Plaintiff United States of America's Motion for Partial Summary Judgment, Motion for Telephonic Oral Argument, and Defendants' Motion to Compel. For the reasons set forth below, the Motion for Summary Judgment [#19] is GRANTED. The Motion for Telephonic Oral Argument [#33] is DENIED, and the Motion to Compel [#28] is DENIED.

LOCAL RULE 7.1(D)(2)(b)

Local Rule 7.1(D)(2)(b) of the Central District of Illinois provides the rule for a non-movant's response to Undisputed Material Facts. Local Rule 7.1(D)(2)(b)(2) provides that in responding to allegedly undisputed material facts, the party filing the response shall:

> List by number each fact from Section B of the motion for summary judgment which is conceded to be material but is claimed to be disputed. Each such claim of disputed fact must be supported by evidentiary documentation referenced by specific page. Include as exhibits all cited documentary evidence not already submitted by the movant.

Furthermore, Local Rule 7.1(D)(2)(b)(6) states that "A failure to respond to any numbered fact will be deemed an admission of the fact." The Seventh Circuit has "repeatedly ... sustained the entry of summary judgment where the non-movant has failed to submit a factual statement in the form called for by the pertinent rule and thereby concedes the movant's version of the facts." *Waldridge v. American Hoechst Corp.*, 24 F.3d 918, 922 (7th Cir. 1994).

Despite the fact that Defendants are represented by counsel, who should be well-aware of the requirements of the Local Rules of any district in which they practice, including Local Rule 7.1(D), Defendants have failed to file a proper response to Plaintiff's statement of undisputed facts. In fact, the totality of their response with respect to undisputed fact 2 is as follows:

> The Zabkas dispute Plaintiff's allegation that an assessment was made against the Zabkas for years 1996 and 1997, following the U.S. Tax Court's Decision. Plaintiff produces no evidence of assessment for 1996 and 1997. Moreover, Revenue Officer Sam Randazzo's declaration is insufficient to establish assessment.

(Defendants' Response at 2.) This response is insufficient and fails to comply with Local Rule 7.1(D)(2)(b)(2) in that if fails to indicate how it renders the identified statement as false or otherwise in dispute; it is purely argumentative. Moreover, the response contains no references by page to pertinent evidentiary documentation establishing the issue of fact. Accordingly, the Court is justified in treating such statements as admitted to the extent that Defendants' response is non-responsive to the identified statements of undisputed fact.

BACKGROUND

On June 28, 2000, Robert K. Zabka and Debra Zabka ("Zabkas" or "Defendants") filed a petition with the U.S. Tax Court seeking a redetermination of their federal income tax liability for the years 1996 and 1997. On April 21, 2004 the United States Tax Court determined that there were deficiencies in income tax, additions to tax, and penalties due from the Zabkas totaling $1,204,825.59 for tax years 1996 and 1997. The Complaint alleges that notices of the assessments and demands for payment were then sent to the Zabkas on or about the dates of the assessments. The Zabkas have not paid the defi-

ciencies, and, as of April 16, 2010, the Zabkas' outstanding balance is $1,769,458.26.

On April 22, 2009, the Zabkas submitted a Freedom of Information Act ("FOIA") Request to Disclosure Officer Stephanie Brown ("Brown") for the tax years 1996 thru 1999, inclusive. The Zabkas requested their "entire file held by IRS Technical Services Advisory Group, Stop 5012 CHI Group Manager, David Jacoby and Revenue Officer Sam Randazzo." The Defendants then received over 1,300 pages from Brown. According to Defendants, there was no Form 23C "Summary Record of Assessments" or Form 4340 "Certificate of Assessment" included in the returned documentation. There were no other documents signed by an assessment officer on the date of the alleged assessment.

On March 2, 2010, the United States Government ("Government") filed its Complaint requesting a determination on unpaid assessments of income tax, penalties, and interest for the years 1996-1999. The Government has now moved for partial summary judgment on Defendants' liability for tax years 1996 and 1997. The matter is fully briefed and this Order follows.

DISCUSSION

Summary judgment should be granted where the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the responsibility of informing the Court of portions of the record or affidavits that demonstrate the absence of a triable

issue. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). The moving party may meet its burden of showing an absence of material facts by demonstrating "that there is an absence of evidence to support the nonmoving party's case." Id. at 325. Any doubt as to the existence of a genuine issue for trial is resolved against the moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Cain v. Lane*, 857 F.3d 1139, 1142 (7th Cir. 1988).

If the moving party meets its burden, the nonmoving party then has the burden of presenting specific facts to show that there is a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). Federal Rule of Civil Procedure 56(e) requires the nonmoving party to go beyond the pleadings and produce evidence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 324. The Court must then determine whether a trial is necessary – whether, in other words, there are any genuine factual issues that must be resolved only by a finder of fact because they may be reasonably resolved in favor of either party. *Anderson,* 477 U.S. at 249; *Hedberg v. Indiana Bell Tel. Co., Inc.*, 47 F.3d 928, 931 (7th Cir. 1995). Finally, where a party bears the burden of proof on an issue, he or she must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact requiring trial. *Sarsha v. Sears, Roebuck & Co.*, 3 F.3d 1035, 1041 (7th Cir. 1993).

Plaintiff asserts a single basis for the entry of summary judgment in its favor: the Zabkas are liable for the unpaid balance of the assessments for the years 1996 and 1997. Normally, the Government establishes its *prima facie* case of liability by introducing into evidence certified copies of the

federal tax assessment. *United States of America v. Hart,* 1989 U.S. Dist. Lexis 13675 (C.D. Ill. 1989). Title 26 U.S.C. § 6203 provides that an "assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary." The corresponding regulation then directs that "[t]he assessment shall be made by an assessment officer signing the summary record of assessment." 26 CFR § 301.6203-1. Historically, this was done using Form 23C, but that being said, "no regulation or statute requires that the 'copy of the record of assessment' mentioned in 26 U.S.C. § 6203 be made on a Form 23C." *March v. Internal Revenue Service,* 335 F.3d 1186, 1188 (10th Cir. 2003).

Here, the Government provides no copies of the actual federal tax assessment or Form 23C, but, instead, includes a copy of the Tax Court decision by Judge Wells and a Declaration of Revenue Officer Randazzo. Although the Defendants attempt to argue that the assessments were never made, by virtue of their failure to comply with Local Rule 7.1(D)(2)(b), they have admitted that:

> On August 9, 2004, a delegate of the Secretary of Treasury made assessments of income tax, penalties, and interest (through the date of assessment) against Robert K. Zabka and Debra Zabka, jointly and severally, for the years 1996 and 1997, in the following amounts:
>
> | Year | Tax | §6651(a)(1) Pen. |
> |---|---|---|
> | 1996 | $258,136.00 | $51,627.20 |
> | 1997 | 271,283.00 | 67,820.75 |

§6662(a)(2) Pen.	Interest
$51,627.20	$242,471.41
54,256.60	207,603.43

Since Defendants have been deemed to concede this material fact, the Court accepts that the assessment was made, and finds that the Government has established a prima facie case of liability.

Even assuming that the Court did not enforce the requirements of Local Rule 7.1(D) against the Zabkas, summary judgment would still be appropriate. The Zabkas' attempt to avoid summary judgment by criticizing the documents produced by the Government in response to their request for the Certificates of Assessment. It is well-settled that while a taxpayer has the right to request a copy of certain parts of the assessment record, the IRS is not required to provide a copy of the actual Summary Record of Assessment. March, 335 F.3d at 1188. Rather:

> [C]ourts have held that the IRS may submit Certificates of Assessments and Payments on Form 4340. Form 4340 details the assessments made and the relevant date that a Summary Record of Assessment was executed. The courts have also held that these Certificates on Form 4340 "are presumptive proof of a valid assessment."

Id.; *United States v. McCallum*, 970 F.2d 66, 71 (5th Cir. 1992) (holding that a Form 4340 can be "presumptive proof of a valid assessment where the taxpayer has produced no evidence to counter that pre-

sumption"); *United States v. Wesselman*, 2010 WL 5394728, at *2 (7th Cir. Dec. 23, 2010); *Geiselman v. United States*, 961 F.2d 1, 6 (1st Cir. 1992). This is precisely what the Government did in this case in producing Certificates of Official Record for 1996 and 1997 signed under seal by Michael C. Loughran (Loughran), Accounting Operations Manager for the Kansas City Submission Processing Center. The documents each consist of Loughran's certification, as well as a multi-page, computerized Certificate of Assessments, Payments, and Other Specified Matters on Form 4340. Both documents identify the Zabkas as the taxpayers by both name and social security number; both show that taxes and penalties were assessed after the Zabkas failed to pay, the assessment date (23C or RAC 006), and reference the issuance of statutory notices. Accordingly, the Government has introduced presumptive proof of valid assessments.

The Zabkas next attempt to rebut the presumptive validity of the assessments by asserting that they never received any notice of assessment. However, it is the preparation and sending of the notice, rather than the actual receipt by the taxpayer that is important. A notice of deficiency is valid, even if it is not received by the taxpayer, if it is mailed to the taxpayer's "last known address." 26 U.S.C. § 6212(b)(1); *Hughes v. United States*, 953 F.2d 531, 541-42 (9th Cir. 1992). Their own self-serving declarations stating that they never received a summary of assessment or duly signed certificate of assessment are simply insufficient to demonstrate that the notices were not sent. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993); *Perez v. United States*, 312 F.3d 191, 195-96 (5th Cir. 2002).

The Zabkas have introduced no evidence promoting the reasonable inference that the notices were not in fact mailed, mailed to an incorrect address, or were mailed to some address other than their last known address.

Finally, the Zabkas rely on the response they received to a Freedom of Information Act Request dated April 21, 2009, to Disclosure Office Stephanie Brown, requesting their "entire file held by Technical Services Advisory Stop 5012 CHI, Group Manager, David Jacoby, and Sam Randazzo." They argue that the fact that this response did not contain any Form 23C Summary Records of Assessment or Form 4340 Certificates of Assessment affirmatively establishes that no such assessments were ever made. With all due respect, this request can best be described as equivalent to a letter sent to a security guard at the National Archives requesting a copy of all documents in his possession and then suggesting that because he did not provide a copy of the U.S. Constitution that it does not exist. This artfully worded request seeking only the file as held by a very specific office, rather than a general records custodian or some other entity within the IRS more likely to possess entire taxpayer files, cannot reasonably promote the inference that the Zabkas seek to draw. They have therefore failed to rebut the presumptive validity of the assessments in question.

Once the Government has established a *prima facie* case of liability, the burden of proof is placed on the taxpayer to show that the assessment is incorrect and to show the correct amount of tax due. *Id.*, citing *United States v. Janis*, 428 U.S. 433 (1976); *Louis v. Reynolds*, 284 U.S. 281 (1932). However, the Zabkas have already had the opportunity to argue the merits

of their case when it was before the Tax Court. Because the Tax Court has already ruled on the correctness of the amount due, judgment on the merits is *res judicata* as to any subsequent proceeding involving the same claim and year. *Commissioner v. Sunnen,* 333 U.S. 591, 598 (1948). Therefore, *res judicata* precludes the Zabkas from contesting liability for any deficiencies for the years 1996 and 1997. *Id.* As a result, they are unable to rebut the Government's *prima facie* case, and summary judgment in favor of the Plaintiff, the United States of America, will be allowed as to its claims regarding the Zabkas' liability for unpaid assessments of income tax, penalties, and interest in the amount of $834,476.00 for the year 1996 and in the amount of $934,982.26 for the year 1997 plus interest and other statutory additions accruing from and after April 15, 2010.

CONCLUSION

The United States Government has established a *prima facie* case of liability for amounts due on assessment for the years 1996 and 1997. The Zabkas have not rebutted the validity of the assessments and are barred from challenging the correctness of the assessments. Consequently, they are liable to the Government based on unpaid assessments of federal income tax, penalties, and interest, in the amount of $834,476.00 for 1996 and $934,982.26 for 1997, each plus interest and other statutory additions accruing from and after April 15, 2010. Therefore, for the reasons set forth above, Plaintiff's Motion for Partial Summary Judgment [#19] is GRANTED, and Defendants' Motion for Telephonic Oral Argument [#33] is DENIED. Defendants' Motion to Compel [#28] is

DENIED, as it is premised upon the assertion that the Form 3430s produced by the Government are insufficient.

Entered this 25th day of February, 2011.

s/ Michael M. Mihm
Michael M. Mihm
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	) E-FILED
	) 14 July, 2011
Plaintiff,	)
v.	) Case No. 10-1078
	)
ROBERT K. ZABKA, et al.	)
Defendants,	)

ORDER

Now before the Court are several pending motions filed by both Plaintiff and Defendants. Oral argument was held on July 8, 2011, and the matters were taken under advisement. For the reasons set forth below, Defendants' Motion to Withdraw Erroneous Admissions [#67] is DENIED. Defendants' Motion to Compel Discovery [#70] is DENIED, and Plaintiff's Motion for Protective Order [#85] is GRANTED. Defendants' First Request for Judicial Notice [#109] is DENIED, and their Motion for Reconsideration [#68] is also DENIED. The Government's Motion for Partial Summary Judgment for Tax Years 1998-99 [#66] is GRANTED.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 26 U.S.C. §§7402 and 7403, and 28 U.S.C. §§1340

and 1345.

BACKGROUND

On October 6, 2003, the Secretary of the Treasury made assessments against Robert K. Zabka and Debra Zabka for $959,775.30 for income tax, penalties, and interest for the years 1998 and 1999. The Zabkas are alleged to owe $219,371.00 in taxes, $43,874.20 in penalties, and $65,707.09 in interest charges for 1998, and $423,392.00 in taxes, $84,678.40 in penalties and $122,752.61 in interest charges for 1999. The Zabkas have not paid the deficiencies, and, as of December 21, 2009, the Zabkas' outstanding balance is $3,345,328.46.

Until October 3, 2000, the Zabkas owned record title, or record title was held in a trust in their names, to 10 properties. The properties are located in Charleston, Illinois, at the following addresses: 18515 Chief Road, 1441 7th Street; 1443 7th Street, 738 18th Street, 1436 9th Street, 1438 9th Street, 1448 9th Street, 1725 Harrison Street, 17585 Harrison Street, and 17613 Harrison Street (collectively known as "The Properties"). The Zabkas acquired title to each of The Properties between June 1987 and November 1999.

The Zabkas transferred title to The Properties to one of three limited partnerships. The limited partnerships include Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Limited Partnership (collectively known as the "Limited Partnerships"). Several of The Properties were transferred by a warranty deed dated October 3, 2000. These were then recorded on either November 3, 2003, or November 7, 2003. However, some of

The Properties were both transferred and recorded on November 3, 2003.

On March 2, 2010, the Government brought this action to obtain judgment and to collect unpaid federal income tax assessments against the Zabkas, to obtain declaration that the federal tax liens associated with the unpaid income tax assessments against the Zabkas attached to The Properties, and to foreclose those federal tax liens. On December 28, 2010, the Zabkas filed their First Amended Counterclaims seeking damages from the United States for unlawful collections actions, failing to release invalid liens upon request, the unauthorized disclosure of information, and deprivation of due process.

DISCUSSION

1. Motion to Withdraw Erroneous Admissions

The Zabkas ask leave to withdraw admissions offered against them in the Government's Motion for Partial Summary Judgment as to 1998-99. The Government served the requests for admission and received no response within the required time frame, resulting in the requests being deemed admitted. Defendants respond that the requests were received by their attorney but were not acted on or forwarded to them and that they had previously indicated that they would not stipulate to a similar informal request. Interestingly enough, however, Defendants' motion and argument do not attack the validity of the admissions and appear to be based on a misapprehension of what the admissions establish. The admissions ask them to admit whether the copies of their tax returns filed are authentic and whether the third document is an accurate copy of a notice of defi-

ciency dated 3/14/03. The admissions do not ask Defendants to stipulate to the fact that they received the notice or the amount of tax owed.

Defendants argue that they received various versions of the notice from a FOIA request, some of which are unsigned drafts or preliminary calculations, but they do not give specific reasons for attacking the notice offered by the Government beyond the assertion that the various documents received pursuant to a FOIA request somehow render the notice produced in this case "suspect."

While the Court can allow the withdrawal of admissions where "it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits," it would seem that there would be no purpose in doing so here as the Zabkas' opposition does not promote the presentation of the merits of the action. Accordingly, the Motion to Withdraw Admissions is denied.

2. Motion to Compel Discovery

Defendants ask the Court to compel the production of documents that the Government objected to as "an improper attempt to circumvent the provisions of FOIA for appeals of adverse decisions of the agency head and action." Defendants summarily argue that this objection is not allowed under the Federal Rules of Civil Procedure, which require the production of relevant discovery that is not otherwise privileged. The Government responds that in addition to that objection, it took the position that the documents were not relevant and were protected from disclosure under the governmental deliberative process, work

product, and attorney-client privileges, or prohibited from disclosure under 26 U.S.C. § 6103. As the motion addresses only the FOIA objection and seeks discovery of documents that have been rendered irrelevant and non-probative as a result of other rulings in this case, the motion must be denied.

3. Motion for Protective Order

The Government asks the Court to enter a protective order excusing them from responding to Defendants' Fourth Written Discovery Request consisting of 92 requests for admission, 33 interrogatories, and 7 requests to produce. Specifically, admissions, interrogatories, and production are all related to: (1) whether assessments were made against the Zabkas; (2) the validity of consents to the extension of time for any such assessments; (3) whether notices of deficiency were sent by the IRS; and (4) the draft notices of deficiency received in response to the FOIA request. In light of the Court's ruling on both Motions for Partial Summary Judgment, this request is granted.

4. First Request for Judicial Notice

Rule 201(b) of the Federal Rules of Evidence defines the type of adjudicative facts of which a court may take judicial notice: "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Here, Defendants essentially ask the Court to take judicial notice of their documentary evidence, the factual conclusions that they draw from their interpre-

tation of the evidence, and their legal conclusions. These are plainly not the type of adjudicative facts intended for judicial notice under Rule 201, and the Court denies the request.

5. Motion for Reconsideration

"Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." Caisse Nationale de Credit v. CBI Industries, 90 F.3d 1264, 1269 (7th Cir. 1996). Furthermore, it is not appropriate to argue matters that could have been raised in prior motions or rehash previously rejected arguments in a motion to reconsider. Id. at 1270.

Defendants' Motion largely consists of rearguing previously rejected arguments and legal interpretations, as well as reliance on case law that is no longer valid. Additionally, while Defendants suggest that they base their Motion on newly discovered evidence, they are incorrect. The Zabkas refer to a letter that they received in 2000 from the IRS's Regional Appeals Office, based on which they allegedly accepted an offer in compromise and took action in the U.S. Tax Court. Given the receipt of this letter and alleged action taken in response long before the filing of this case, it cannot be reasonably deemed "newly discovered evidence" and could have been raised previously through the exercise of due diligence.

The Zabkas also refer to discovery responses received after they filed their response but prior to the Court's ruling on summary judgment. They then offer their interpretation of these responses as applied to their previously rejected legal theories, but this effort is unavailing as different facts applied to the same fatally flawed analysis warrant the same re-

sult. Furthermore, there is no reason why such arguments couldn't have been made previously. If the Zabkas believed that additional discovery was necessary before responding to the prior motion for summary judgment, they could have certified that such discovery was necessary under Rule 56(d) and had such information prior to filing their response. Their failure to do so does not warrant relief under a motion for reconsideration.

6. Motion for Partial Summary Judgment as to Tax Years 1998-99

On June 7, 1999, the Zabkas' 1998 federal income tax return was processed by the IRS; their 1999 federal income tax return was processed on May 22, 2000. A statutory notice of deficiency dated March 14, 2003, was prepared by the IRS in connection with the Zabkas' income tax liability for 1998 and 1999. Although the Zabkas deny ever receiving the notice, IRS records indicate that it was sent by certified mail on March 14, 2003 to the Zabkas at several known addresses. In addition to the IRS date stamp, the certified mail log also bears a stamp that indicates receipt by the United States Postal Service location in Chicago, Illinois 60604, on March 14, 2003. Corresponding certified mail receipts bear the same USPS stamp dated March 14,2003.

The Government asserts that a delegate of the Secretary of the Treasury made assessments against the Zabkas for income tax, the accuracy-related penalty, and interest through the date of the assessment for 1998 and 1999 on October 6, 2003, in the following amounts:

Year	Tax	Related Pen.	Interest
1998	$219,371.00	$43,874.20	$65,707.09
1999	$423,392.00	$84,678.40	$122,752.61

The Zabkas deny that any such assessments were made, again relying on documents received in FOIA requests that predated this litigation.

On March 2, 2010, the Government filed its Complaint requesting a determination on unpaid assessments of income tax, penalties, and interest for the years 1996-1999. Partial summary judgment was entered in favor of the Government for tax years 1996 and 1997, and the Government has now moved for partial summary judgment on Defendants liability for tax years 1998 and 1999. The matter is fully briefed and this Order follows.

DISCUSSION

Summary judgment should be granted where the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the responsibility of informing the Court of portions of the record or affidavits that demonstrate the absence of a triable issue. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The moving party may meet its burden of showing an absence of material facts by demonstrating "that there is an absence of evidence to support the nonmoving party's case." Id. at 325. Any doubt as to the existence of a genuine issue for trial is resolved against the moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Cain v.

Lane, 857 F.3d 1139, 1142 (7th Cir. 1988).

If the moving party meets its burden, the nonmoving party then has the burden of presenting specific facts to show that there is a genuine issue of material fact. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Federal Rule of Civil Procedure 56(e) requires the nonmoving party to go beyond the pleadings and produce evidence of a genuine issue for trial. Celotex Corp., 477 U.S. at 324. The Court must then determine whether a trial is necessary – whether, in other words, there are any genuine factual issues that must be resolved only by a finder of fact because they may be reasonably resolved in favor of either party. Anderson, 477 U.S. at 249; Hedberg v. Indiana Bell Tel. Co., Inc., 47 F.3d 928, 931 (7th Cir. 1995). Finally, where a party bears the burden of proof on an issue, he or she must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact requiring trial. Sarsha v. Sears, Roebuck & Co., 3 F.3d 1035, 1041 (7thCir. 1993).

Plaintiff asserts a single basis for the entry of summary judgment in its favor: the Zabkas are liable for the unpaid balance of the assessments for the years 1998 and 1999. Normally, the Government establishes its *prima facie* case of liability by introducing into evidence certified copies of the federal tax assessment. United States of America v. Hart, 1989 U.S. Dist. Lexis 13675 (C.D. Ill. 1989). Title 26 U.S.C. § 6203 provides that an "assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary." The corresponding regulation then directs that "[t]he assessment shall be made by an assessment officer signing

the summary record of assessment." 26 CFR § 301.6203-1. Historically, this was done using Form 23C, but that being said, "no regulation or statute requires that the 'copy of the record of assessment' mentioned in 26 U.S.C. § 6203 be made on a Form 23C." March v. Internal Revenue Service, 335 F.3d 1186, 1188 (10th Cir. 2003).

The Zabkas again attempt to avoid summary judgment by criticizing the documents produced by the Government in response to their request for the Certificates of Assessment. It is well-settled that while a taxpayer has the right to request a copy of certain parts of the assessment record, the IRS is not required to provide a copy of the actual Summary Record of Assessment. March, 335 F.3d at 1188. Rather:

> [C]ourts have held that the IRS may submit Certificates of Assessments and Payments on Form 4340. Form 4340 details the assessments made and the relevant date that a Summary Record of Assessment was executed. The courts have also held that these Certificates on Form 4340 "are presumptive proof of a valid assessment."

Id.; United States v. McCallum, 970 F.2d 66, 71 (5th Cir. 1992) (holding that a Form 4340 can be "presumptive proof of a valid assessment where the taxpayer has produced no evidence to counter that presumption"); United States v. Wesselman, 2010 WL 5394728, at *2 (7th Cir. Dec. 23, 2010); Geiselman v. United States, 961 F.2d 1, 6 (1st Cir. 1992). This is precisely what the Government did in this case in

producing Certificates of Official Record for 1998 and 1999 signed under seal by Michael C. Loughran (Loughran), Accounting Operations Manager for the Kansas City Submission Processing Center. The documents each consist of Loughran's certification, as well as a multi-page, computerized Certificate of Assessments, Payments, and Other Specified Matters on Form 4340. Both documents identify the Zabkas as the taxpayers by both name and social security number; both show that taxes and penalties were assessed after the Zabkas failed to pay, the assessment date (23C or RAC 006), and reference the issuance of statutory notices. Accordingly, the Government has introduced presumptive proof of valid assessments.

As they did in response to the prior summary judgment motion, the Zabkas attempt to rebut the presumptive validity of the assessments by asserting that they never received any notice of assessment. However, it is the preparation and sending of the notice, rather than the actual receipt by the taxpayer that is important. A notice of deficiency is valid, even if it is not received by the taxpayer, if it is mailed to the taxpayer's "last known address." 26 U.S.C. § 6212(b)(1); Hughes v. United States, 953 F.2d 531; 541-42 (9th Cir. 1992). Their own self-serving declarations stating that they never received a summary of assessment or duly signed certificate of assessment are simply insufficient to demonstrate that the notices were not sent. Hansen v. United States, 7 F.3d 137, 138 (9th Cir. 1993); Perez v. United States, 312 F.3d 191, 195-96 (5th Cir. 2002). The Zabkas have introduced no evidence promoting the reasonable inference that the notices were not in fact mailed, mailed to an incorrect address, or were

mailed to some address other than their last known address.

Furthermore, in light of their admissions, the Zabkas' attempt to cast suspicion on the notices by referencing several other drafts and copies of the notice that were obtained through a FOIA request predating this case is unavailing. They focus on minor discrepancies in what were clearly revisions and drafts of the working document and argue that they were never sent, when the Government does not contend that any of the drafts or working copies were in fact sent. Defendants also fail to address the import of the USPS stamp on the mailing log or certified mail receipts or claim that none of the various addresses to which the notices were mailed were their known addresses. They have therefore failed to rebut the presumptive validity of the assessments in question or the presumption that the notices were mailed that arises pursuant to O'Rourke v. United States, 587 F.3d 537, 540 (2nd Cir. 2009).

Once the Government has established a *prima facie* case of liability, the burden is placed on the taxpayer to show that the assessment is incorrect and to show the correct amount of tax due. United States v. Schroeder, 900 F.2d 1144, 1148 (7th Cir. 1990); United States v. Janis, 428 U.S. 433 (1976); Louis v. Reynolds, 284 U.S. 281 (1932). While Defendants attempt to do this by referencing discrepancies in figures among the draft and working copies of the notices received pursuant to their FOIA request discussed previously, they have admitted that, "[t]he adjustments to income and deductions, and the other determinations that are set forth in [the March 14, 2003, notice] are all correct, and the computations and amounts that are set forth in [the March 14,

2003, notice] are accurate and correct."

The Zabkas argue that any assessments were not timely made because they were not provided notice of their right to refuse or limit extension of the assessment date when asked to sign waivers for the 1998 and 1999 tax years. However, Defendants have not cited and the Court is otherwise unaware of any caselaw establishing that a failure to notify a debtor of the right to refuse to extend the statutory period renders his or her consent void as a matter of law.

Finally, Defendants assert that a statement to the effect that "there was no certified/registered receipt" in a Case Notes Report documenting a July 31, 2007, telephone conversation between an IRS employee and IRS Revenue Officer Campagna somehow establishes that the IRS did not send the statutory notice of deficiency to them. When considered in context, the only reasonable interpretation of this comment is that the Zabkas did not sign the receipt for the certified mail package. Although this could be indicative of the mailing not being received, it is in no way probative of the contention that the mailing was not sent.

As a result, Defendants are unable to rebut the Government's *prima facie* case, and summary judgment in favor of the Plaintiff, the United States of America, will be allowed as to its claims regarding the Zabkas' liability for unpaid assessments of income tax, penalties, and interest in the amount of $570,569.52 for the year 1998 and in the amount of $1,096,965.45 for the year 1999 plus interest and other statutory additions accruing from and after January 18, 2011.

CONCLUSION

For the reasons set forth herein, Defendants' Motion to Withdraw Erroneous Admissions [#67] is DENIED. Defendants' Motion to Compel Discovery [#70] is DENIED, and Plaintiff's Motion for Protective Order [#85] is GRANTED. Defendants' First Request for Judicial Notice [#109] is DENIED, and their Motion for Reconsideration [#68] is also DENIED. The Government's Motion for Partial Summary Judgment for Tax Years 1998-99 [#66] is GRANTED.

ENTERED this 14th day of July, 2011.

s/ Michael M. Mihm
Michael M. Mihm
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

UNITED STATES OF AMERICA,	) E-FILED
	) 30 March, 2012
Plaintiff,	)
v.	) Case No. 10-1078
	)
ROBERT K. ZABKA, et al.	)
Defendants,	)

ORDER

This matter is now before the Court on Plaintiff the United States of America's ("the Government") Motion for Partial Summary Judgment for Lien Enforcement [114] and Defendants Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Limited Partnership's Motion to Dismiss [128]. For the reasons set forth below, the Government's Motion [114] is GRANTED and the Partnership Defendants' Motion [128] is DENIED.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 26 U.S.C. §7602 and 7403, and 28 U.S.C. §1340 and 1345.

PROCEDURAL BACKGROUND

On March 2, 2010, the Government brought this action to obtain judgment and to collect unpaid federal income tax assessments against the Zabkas for the years 1996 through 1999, to obtain a declaration that the federal tax liens associated with those assessments attached to certain properties, and to foreclose upon those federal tax liens. In its Amended Complaint [93], the Government argues that federal tax liens attached to the Zabkas' ownership interests in the Partnerships or, alternatively, that federal tax liens attached directly to the real property which the Zabkas transferred to the Partnerships. On February 25, 2011, this Court granted the Government's Motion for Partial Summary Judgment and found that the Zabkas are liable "based on unpaid assessments of federal income tax, penalties, and interest, in the amount of $834,476.00 for 1996 and $934,982.26 for 1997, each plus interest and other statutory additions accruing from and after April 15, 2010." [64, 8]. On July 14, 2011, this Court granted the Government's Motion for Partial Summary Judgment and found that the Zabkas are liable "for unpaid assessments of income tax, penalties, and interest in the amount of $570,569.52 for the year 1998 and in the amount of $1,096,965.45 for the year 1999 plus interest and other statutory additions accruing from and after January 18, 2011." [111, 12-13].

The Government now moves for Partial Summary Judgment for Lien Enforcement [114], seeking a determination as a matter of law that federal tax liens arose when the IRS made tax assessments against the Zabkas and that those liens have attached to all property and rights to property of the

Zabkas. Notably, the Government concedes that it "did not include [its] alternative contention" in its Motion for Summary Judgment [114] – that federal tax liens attached directly to the Zabkas' real property which they transferred to the Partnerships – but that it "instead sought judgment only in [its] primary contention, that the liens attached to and should be enforced against the Zabkas' ownership interests in the partnerships, which are considered personal property." [126, 8]. To that end, the Government indicates that it intends to request that this Court to appoint a receiver to enforce those liens pursuant to 26 U.S.C. §7403(d). [126-1]. Defendants Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Limited Partnership move to dismiss the instant case pursuant to FED. R. CIV. P. 12(b)(7). The issues are fully briefed and this Order follows.

STANDARD

Federal Rule of Civil Procedure 56(c) provides that summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S*ee also* Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). To determine whether there is a genuine issue of material fact, courts construe all facts in the light most favorable to the non-moving party and draw all reasonable and justifiable inferences in favor of that party. *See* Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d

202, 106 S. Ct. 2505 (1986).

FACTUAL BACKGROUND

The pending motions' disposition largely revolves around three points of fact: the Partnership Agreements governing certain properties which, at one point, were owned or held in trust for the Zabkas; the Zabkas' assessment dates for tax years 1996 through 1999; and Prairie State Bank & Trust's ("Prairie State") interest in three of the aforementioned properties. The Court will address each area in turn.

Until October 3, 2000, the Zabkas owned record title, or record title was held in a trust in their names, to 10 properties.[1] On that day, the Zabkas entered into three limited partnership agreements; these agreements state that the Zabkas were the only general partners and the only limited partners in Brookstone Hospitality Limited Partnership,[2] Antiques Limited Partnership,[3] the ZFP Limited Partnership.[4] All three Limited Partnerships' agreements[5] were altered on November 13, 2003. The sole change to the Agreements was that Dunamis, LLC ("Dunamis") was listed as the only general partner. The Zabkas remained limited partners in each Partnership and each Agreement stated that Dunamis had no ownership or capital interest in the Partner-

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[1] The properties are located in Charleston, Illinois: 18515 Chief Road, 1441 7th Street, 1443 7th Street, 738 18th Street, 1436-38 9th Street, 1448 9th Street, 1725 Harrison Street, 17585 Harrison Street, and 17613 Harrison Street (collectively known as "the Properties.")

[2] [114-6]

[3] [114-8]

[4] [114-10]

[5] *See* [114-7, 9, 11]

ship, that Dunamis could not deduct partnership losses, and that Dunamis would not receive a distribution upon liquidation of the given Partnership. *See, e.g.* [114-7 at ¶¶ 2.1 and 7.4]. Dunamis was allowed a one percent share of profits; the Zabkas were each allotted 49.5 percent share of profits and a 100 percent share or losses or capital interest. *See, e.g.* [114-7 at 12].

This Court has previously determined that the Zabkas were properly issued Notices of Deficiency for the tax years at issue. Likewise, the Court addressed the issue of when and how the Zabkas' assessment expiration date was extended. In doing so, the Court found that on October 6, 2003, the Government properly assessed the Zabkas for unpaid income taxes, penalties, and interest for years 1998 and 1999, and that on August 9, 2004, the Government assessed the Zabkas with respect to years 1996 and 1997. [64, 111]. The Zabkas asked this Court to reconsider its finding, but the Court held that they "fail[ed] to present any newly discovered evidence, any citation to changed applicable law, or any novel and persuasive argument regarding previous claims [concerning the propriety of assessments made against them] they have already advanced." [115 at 3].

On October 3, 2003, the Coles County Recorder's Officer recorded a mortgage[6] held by Prairie State for both the 1436-1438 9th Street and 1448 9th Street properties. On April 13, 2004, the Coles County

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[6] In its Response to the Government's Motion for Summary Judgment [118], Prairie State Bank indicates that it acquired the mortgage for 1436-1438 9th Street and 1448 9th Street on October 31, 2003. However, the Court's review of the relevant Mortgage reveals that it was recorded on October 3, 2003. *See* [104-3].

Recorder's Office recorded Prairie State acquiring a mortgage[7] for the 18515 Chief Road property.

DISCUSSION

1. The Government's Motion for Summary Judgment

In support of its Motion for Summary Judgment [114], the Government submitted evidence of the unpaid tax assessments against the Zabkas in the form of Certificates of Assessments and Payments. The Zabkas, Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Limited Partnership and Dunamis ("the Defendant Partnerships,") and Prairie State all object to summary judgment on various grounds. The Court considers each party's objections in turn.

a. The Zabkas' Response to the Government's Motion for Summary Judgment

The Zabkas object to summary judgment on three grounds. Turning to their first claim, the Zabkas argue that the Government's Amended Complaint [93] must be dismissed and its Motion for Summary Judgment [114] denied because "the government did not name all persons having liens or claiming any interest in the real property at issue in this action." [120, 2]. However, the Zabkas go no further on this point: they do not include relevant case law or supplement their argument beyond citing to 26 U.S.C. § 7403(b). The Seventh Circuit has made abundantly clear in an unbroken series of cases that because the Zabkas fail to develop their argument,

[7] [104-2].

they have forfeited it. *See e.g.,* Marcatante v. City of Chicago, 657 F.3d 433, 444 (7th Cir. 2011) (holding that plaintiffs' "passing reference [to a due process claim]... is completely undeveloped and so is waived."); White Eagle Co-op. Ass'n v. Conner, 553 F.3d 467, 476 (7th Cir. 2009)("... it is not the province of the courts to complete litigants' thoughts for them, and we will not address this undeveloped argument."); United States v. Berkowitz, 927 F.2d 1376, 1384 (7th Cir.1991)("We repeatedly have made clear that perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived (even where those arguments raise constitutional issues)."). The Court hereby rejects the Zabkas' argument as it relates to summary judgment on this ground.

The Zabkas next claim that because they were not properly assessed, were not sent notices of deficiency, and were not sent notice and demand for payment, that summary judgment should be denied. As indicated above, this Court has previously considered and rejected these arguments in its previous Orders regarding Summary Judgment [64, 111] and the Zabkas' Motion to Reconsider. [137]. As such, the Court declines to revisit the issue.

Lastly, the Zabkas argue that the Government's request for the appointment of a receiver should be denied because the Government failed to properly attach a certificate that the appointment of a receiver was in the public interest. In its Response [126], the Government concedes that it did not append said certificate to its Amended Complaint, but attached it as an exhibit to its Response. Accordingly, the Court determines that the Zabkas have not submitted any disputed genuine issue of material fact

that remain and finds that the Zabkas' objections to the Government's motion for summary judgment are meritless. The Government's Motion [114] is GRANTED with respect to the Zabkas.

b. The Defendant Partnerships' Response to the Government's Motion for Summary Judgment

The first argument in the Defendant Partnerships' Response [119] nearly verbatim tracks the first argument in the Zabkas' Response. [120]. Like the Zabkas, the Partnerships argue that the Government's motion for summary judgment should be denied because it did not name all persons having liens or claiming any interest in the real property at issue in this action, in accordance with 26 U.S.C. § 7403(b). Aside from citing to the relevant statute and making a cursory statement that "the government did not name all persons having liens or claiming any interest in the real property" [119, 10], the Partnerships' claim is not supported by argument or evidence. The Court finds that the Defendant Partnerships' argument is perfunctory and undeveloped. Accordingly, this Court will not consider it.

The Defendant Partnerships also assert that even if the Government were to have named all required parties, this Court should not grant summary judgment because federal tax liens did not attach to the sixteen pieces of real property or the general partnership interest at issue. The Court addresses each argument in turn.

When the government makes assessments and a taxpayer's taxes remain unpaid after notice and demand, federal tax liens attach to "all property and rights to property, whether real or personal" of that

taxpayer. 26 U.S.C. §§ 6321, 6322. Tax liens are "continuing" and thus attach to all property owned by a taxpayer during the life of the lien. Glass City Bank v. United States, 326 U.S. 265, 267, 66 S. Ct. 108, 90 L. Ed. 56, 1945 C.B. 330 (1945). Because the Court has already found that tax liens attached to the Zabkas' property when assessments were made on October 6, 2003, and again on April 13, 2004, the question becomes whether the Government has satisfied its burden of establishing that the property in question belonged to the Zabkas.

To avoid the Government's asserted lien, the Defendant Partnerships rely on Section 6323(h) of the Internal Revenue Code ("I.R.C.") which provides that an IRS lien is not valid with respect to certain bona fide "purchasers."[8] The Partnerships argue that they gave the Zabkas "adequate and full consideration in money or money's worth" within the meaning of § 6323(h) in the form of a limited partnership interest in exchange for specific pieces of real property. The Partnerships argue that the limited partnership interest given to the Zabkas "was equal to the value of the real estate." [119, 12]. In its Response, the Government correctly notes that the Partnerships' argument is irrelevant because its "motion for partial summary judgment does not seek enforcement of the federal tax liens against any such [real] property" [125, 6] but rather seeks a determination that those liens have attached to all personal property and rights to property of the Zabkas, including all of their

[8] The I.R.C. defines purchases as "a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice." 26 USC § 6323(h)(6)

ownership interests in the Partnerships. Because the Partnerships attempt to respond to an argument that is not currently before the Court, the Court hereby finds this point inapplicable to the instant motion for summary judgment.

The Partnerships also argue that the Government's motion for summary judgment fails because Dunamis acquired its general partnership interest before the Government gave notice of its liens and, therefore, qualifies as a "purchaser" within the meaning of 26 U.S.C. § 6323(h). However, the Partnerships go no further in advancing their argument either with evidence or with argument. Instead, they merely state:

> "Simply put, Dunamis, LLC acquired its general partnership interest in the ... partnerships and [the partnerships] acquired an interest in the sixteen parcels of real property at issue before the Government gave notice of its alleged liens pursuant to subsection (f) of §6323." Id. at 10.
>
> "The Zabkas' Illinois limited partnership interest is a security." Id. at 12.
>
> "The Zabkas [sic] limited partnership interest... clearly constitutes 'money or money's worth.' " Id.

The Court finds that these cursory statements, unsupported by argument or buoyed by reference to evidence, do not fulfill the Seventh Circuit's mandate that perfunctory and undeveloped arguments are waived. In any event, the Court notes that the

parties do not dispute that the amended and restated partnership agreements refer to Dunamis as a "profits-only partner" which would contribute its services in exchange for a share of the profits but would receive no ownership in the partnership. *See, e.g.* [114-7]. The Partnerships fail to dispute any genuine issue of material fact by referencing record evidence regarding whether the property in question belonged to the Zabkas. Accordingly, the Court hereby finds that as of the dates of their assessments, the Zabkas' property and rights to property included all of their ownership interests in Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Limited Partnership.

Finally, the Partnerships argue that even if the federal tax liens attach to the property in question, then the Government cannot dissolve the Partnerships or sell their property pursuant to the amended and restated partnership agreements and Illinois law. Again, the Partnerships' argument is completely undeveloped – they fail to substantiate their claim with any evidence or cite to any controlling case law. As such, their argument is waived. The Court hereby rules that the Government's Motion [114] is GRANTED as to the Partnership Defendants.

c. Prairie State Bank's Response to the Government's Motion for Summary Judgment

Prairie State's Response [118] explains that it does not oppose the Government's Motion [114] insofar as it seeks relief against the Zabkas and the Partnership Defendants. However, Prairie State does

dispute the Government's Motion "to the extent that it can be construed to claim that [the Government's] tax liens have priority over [Prairie State's] mortgage liens on property at 18515 Chief Road, 1436-1438 9th Street, and 1448 9th Street, Charleston Illinois." [118, 4]. In support of its Response, Prairie State submits the mortgages and relevant renewal notes for the 1436-1438 9th Street and 1448 9th Street properties and the 18515 Chief Road property. These properties were recorded in the Coles County Recorder's Officer on October 3, 2003, (for the two 9th Street properties), and on April 13, 2004, (for the Chief Road property). [118-1]. The Government's reply to Prairie State asserts that it "does not take the position that federal tax liens have priority over [Prairie State's] mortgage liens with respect to any specific pieces of real property." [122, 3]. Accordingly, the Court finds that the issue of lien priority is not before it at this time and that Prairie State's objection is irrelevant to the instant motion for summary judgment. However, the Court will set a status hearing with respect to the issue of lien priority within 21 days of this Order being entered.

2. The Partnership Defendants' Motion to Dismiss

Defendants Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Limited Partnership move to dismiss this case with prejudice and without leave to amend pursuant to FED. R. CIV. P. 12(b)(7). The Defendant Partnerships claim that this case should be dismissed because the Government's Amended Complaint [93] fails to name all persons having liens upon or claiming any interest in the real property identified there-

in as required by 26 U.S.C. § 7403(b).

Initially, the Court notes that Rule 12(b)(7) is an improper vehicle for the Partnerships to pursue disposing of this case. The Northern District of Illinois has held that "it is hornbook law that Rule 12 motions must be filed before filing a responsive pleading, *see* Wright & Miller, Federal Practice & Procedure: Civil 2d § 1361 ('If a party decides to raise any of the seven enumerated defenses [in Rule 12] by motion, 'it shall be made before pleading if a further pleading is permitted.") (quoting Fed. R. Civ. Pro. 12(b)), which by necessity must also precede filing a summary judgment motion." Holy Cross Hosp. v. Bankers Life & Cas. Co., 2002 U.S. Dist. LEXIS 19643, 5-6 (N.D. Ill. Oct. 11, 2002). The Partnerships offer no reason why this Court should deviate from the plain language of FED. R. CIV. P. 12(b) and, consequently, their Motion [128] is DENIED.

CONCLUSION

The Court hereby finds that federal tax liens arose when the IRS made tax assessments against the Zabkas and that those liens have attached to all personal property and rights to property of the Zabkas, including all of their ownership interests in the Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Partnership. The Court will consider appointing a Receiver pursuant to 26 U.S.C. §7403(d) upon a proper motion and certificate being tendered by the Government within 21 days of this Order. For the aforementioned reasons, the Government's Motion [114] is GRANTED and the Defendant Partnership's Motion [128] is DENIED.

Entered this 30th day of March, 2012.

/s/ Michael M. Mihm
Michael M. Mihm
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
for the CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	) FILED) June 29 2012
vs.	) Case No. 10-1078
ROBERT K. ZABKA, DEBRA ZABKA, BROOKSTONE HOSPITALITY LIMITED PARTNERSHIP, ANTIQUES LIMITED PARTNERSHIP, ZFP LIMITED PARTNERSHIP PRARIE STATE BANK & TRUST, N.A., FIRST MID-ILLINOIS BANK & TRUST, N.A., BANK OF AMERICA, N.A., ELEOS, LLC, MARSHALL BRENT ZABKA UNKNOWN	)

JUDGMENT IN A CIVIL CASE

DECISION BY THE COURT. This action came before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Judgment is entered in favor of the Plaintiff. Defendants' motion [149] and [150] are DENIED as untimely. CASE TERMINATED.

Dated: 6/29/12

s/ Pamela E. Robinson
Pamela E. Robinson
Clerk, U.S. District Court

APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

UNITED STATES OF AMERICA,	) E-FILED
	) 11 September 2012
Plaintiff,	)
v.	) Case No. 10-1078
	)
ROBERT K. ZABKA, et al.	)
Defendants,	)

ORDER

This matter is now before the Court on Plaintiff the United States of America's ("the Government") Motion for Appointment of Receiver [#145]. For the following reasons, the Government's Motion [#145] is GRANTED.

BACKGROUND

The Government brought this lawsuit to obtain judgment and to collect unpaid federal income tax assessments against the Zabkas for years 1996 through 1999, to obtain a declaration that the federal tax liens associated with those assessments attached to all property and rights to property of Robert and Debra Zabka ("the Zabkas"), and to foreclose upon those federal tax liens. During the course of this litigation, the Court has made the following findings relevant to the Government's instant motion:

October 3, 2000	Zabkas entered into three Limited Partnership Agreements[1]
October 6, 2003	Assessments made for unpaid incomes taxes, penalties, and interest for tax years 1998 and 1999; federal tax liens arose
November 13, 2003	Limited Partnership Agreements are amended – sole change was to list Dunamis, LLC as the only general partner[2]
August 9, 2004	Assessments made for unpaid incomes taxes, penalties, and interest for tax years 1996 and 1997; federal tax liens arose

On March 30, 2012, this Court granted the Government's Motion for Summary Judgment [#144], finding that federal tax liens arose when the Internal Revenue Service ("IRS") made tax assessments against the Zabkas and that those liens attached to all personal property and rights to property of the

[1] These agreements state that the Zabkas were the only general partners and the only limited partners in Brookstone Hospitality Limited Partner-ship, Antiques Limited Partnership, the ZFP Limited Partnership ("the Limited Partnership Defendants.")

[2] The Zabkas remained limited partners in each Partnership and each Agreement stated that Dunamis had no ownership or capital interest in the Partnership, that Dunamis could not deduct partnership losses, and that Dunamis would not receive a distribution upon liquidation of the given Partnership. Dunamis was allowed a one percent share of profits; the Zabkas were each allotted 49.5 percent share of profits and a 100 percent share or losses or capital interest.

Zabkas, including all of their ownership interests in the Limited Partnerships. As of October 6, 2003, the Zabkas' personal property and rights to property included their 100 percent ownership interest in the Limited Partnerships.

On April 20, 2012, the Government filed its Motion for Appointment of Receiver [#145] and supported it with proper certification [#145-1]. The Zabka Defendants and the Dunamis and Limited Partnership Defendants object to the appointment of a receiver and also dispute what procedures govern the management and liquidation of the Zabkas' property. The issue has been exhaustively briefed and this Order follows.

DISCUSSION

1. Does this Court have the authority to appoint a receiver in equity?

In the instant case, the Government seeks the appointment of a receiver with the powers of a receiver in equity pursuant to 26 U.S.C. §§ 7403(d) and 7402(a). In relevant part, the Internal Revenue Code provides:

> The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue... orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United

> States in such courts or otherwise to enforce such laws.

26 U.S.C. § 7402(a) (2012). The Internal Revenue Code also provides that a court "may appoint a receiver to enforce the lien, or, upon certification by the Secretary during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity." 26 U.S.C. § 7403(d) (2012).

The Limited Partnership and Dunamis Defendants oppose the appointment of a receiver and, in so doing, properly classify the language used to describe the court's power to appoint a receiver in §§ 7402(a) and 7403(d) as discretionary. In doing so, the Limited Partnership and Dunamis Defendants cite to *Harris N.A. v. United States*, 2011 U.S. Dist. LEXIS 22066 (N.D. Ill. 2011) wherein that Court noted "nothing in the language of these statutes requires the court to appoint a receiver... rather than proceed with a judicial sale." In keeping with their past submissions to the Court, the Defendants did not bolster the citation with any argument of their own. However, the Defendants' failure to properly articulate their position of little consequence because it does not follow that because this Court's ability to appoint a receiver is discretionary, that the Court *should not* do so in the instant case.

The Limited Partnership and Dunamis Defendants also argue that the appointment of a receiver requires a showing that the underlying assets are in jeopardy, citing to this Circuit's opinion in *In re McGaughey*. In that case, the Seventh Circuit found that when a § 7403(d) request for appointment of a receiver is made, the Government "needs only to

make a *prima facie* showing that a substantial tax liability probably exists and that the Government's collection efforts may be jeopardized if a receiver is not appointed." *In re McGaughey*, 24 F.3d 904, 907 (7th Cir. 1994). The Limited Partnership and Dunamis Defendants claim that because there has been no such showing of jeopardy with respect to the underlying real properties in this case that the appointment of a receiver should be denied.

The Government takes issue with this reading of *In re McGaughey*, stating that there "the Seventh Circuit merely described the standard applicable for a temporary receivership... [and additionally] did not consider § 7402(a), which is a separate basis for the United States' motion in the present case." [#167 at 5]. Furthermore, the Government argues that § 7402(a) "has been construed broadly to allow courts the full panoply of remedies necessary to effectuate the enforcement of the federal tax laws" [#167 at 8] (citing *United States v. Bartle*, 2002 WL 75437*4 (S.D. Ind. Jan 16, 2002)) and, as such, the statute empowers the Court to appoint a receiver in this case.

Additionally, the Government cites to *United States v. Rodgers* 461 U.S. 677, 707, n. 36 (1983) to argue that the appointment of a receiver under § 7403(d) is appropriate where "the collector of internal revenue...has reason to believe the taxpayer will not be able to meet his obligations and where the public interest will be prejudiced by resorting to the provisions in the present law, for distraint on the taxpayer's assets." Indicating the Zabkas' tax liability of "more than $3.4 million in unpaid income tax debts... [and their] unbending refusal to pay those debts... [which] continues to date" the

Government concludes that "[c]learly then, the Zabkas have not been meeting their obligations and the United States has good reason to believe that they will not be able to meet their tax obligations." [#167 at 8]. In light of its tendered § 7403(d) certification [#145-1] and its argument as outlined above, the Government maintains it has met the requirements for the appointment of a receiver pursuant to §7403(d).

Initially, the Court finds that given the facts of this case and the timing of the receivership request, there is no need for it to make a jeopardy determination. Unlike *In re McGaughy*, this litigation has effectively ended; judgment was entered in favor of the Government and the only remaining task is for the Government's tax liens to be enforced against the Zabkas' property and rights to property. In this post-judgment context, the Zabkas cannot now succeed on the merits of arguing their tax liability and there is no risk of harm to the Defendants. As indicated above, the Court previously found that the Government's liens attached to all property and rights to property of the Zabkas when it assessed them for tax years 1998 and 1999 on October 6, 2003. At that time, the Zabkas' property and rights to property included their 100 ownership interest and 100 percent partnership interest in the Limited Partnerships. Accordingly, the Court declines to make a jeopardy finding.

Because it is within this Court's broad statutorily prescribed purview to do so, the Court hereby GRANTS the Government's Motion for Appointment of Receiver [#145]. The Court now turns to the terms of the receivership, namely how the Receiver will properly marshal, manage, and liquidate the afore-

mentioned assets.

2. Once appointed, what procedures must the receiver follow in managing and liquidating the assets?

In their brief [#178] addressing what procedures a receiver must follow in managing and operating the Zabkas' property and rights to property, the Dunamis and Limited Partnership Defendants argue that 28 U.S.C. § 959(b) compels the Government to observe state law – specifically, 805 Ill. Comp. Stat. 215/703 which governs the rights of a creditor of a partner or transferee under Illinois law. Defendants claim that Illinois state law is unequivocal in that it "provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest," *see* 805 Ill. Comp. Stat. 215/703, and that the "exclusive remedy" is a charging order. Furthermore, Defendants contend that Congress has the unambiguous authority to "withhold from District Courts the power to authorize receivers in conservation proceedings to transact local business, contrary to state statues obligatory on all others." *Gillis v. California*, 293 U.S. 62, 66 (1934). Defendants' remaining arguments are ones which, admittedly, they have previously raised and are inappropriate to reconsider at this post-judgment stage of litigation. ("The LP's and Dunamis raised [the issue of Dunamis perfecting its security interest in the taxpayers' property prior to the Government filing its Notice of Federal Tax Lien] in their Joint Motion to Dismiss (ECF 128)... the LP's and Dunamis asserted the foregoing arguments in their Response (ECF 119)...and [their] Motion for Sanctions (ECF 135)...

[i]n addition, the arguments were raised in Dunamis and the LP's Response (119).") [#178, 14-5].

The Court first turns to the language of 28 U.S.C. § 959(b) which provides:

> [A] trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

28 U.S.C. § 959(b). Defendants argue that the plain language of the statute, combined with the Supreme Court's decision in *Gillis v. California*, require the receiver to obtain a charging order to satisfy the Government's judgment. In that case, the Supreme Court held that "if the receiver cannot continue to carry on the Company's business according to the plain direction of Congress, he must pursue some other course permitted by law." 293 U.S. at 66. However, the issue decided in *Gillis* – that a lower court could not exempt a receiver from valid state laws that regulate how a company was to be safely conducted – is not the issue now before the Court. Because the Court has already determined that the appointment of a post-judgment receiver is appropriate, the remaining question is *how* the receiver is to manage, operate, and necessarily liquidate the Zabkas' interests in the Limited Partnerships in order to satisfy the Government's liens against that

property and interest in property.

In considering the import of § 959(b), the Seventh Circuit held "just as an owner of possessor of property is required to comply with state law, so too must a receiver comply with state law in the 'management and operation' of the receivership property in his possession." *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 (7th Cir. 2010). However, the Seventh Circuit went on to hold "[m]odern courts have... concluded that § 959(b) does not apply to liquidations." *Id.* (citing *In re Valley Steel Prods. Co.*, 157 B.R. 442, 447-49 (Bankr. E.D. Mo. 1993) (holding § 959(b) does not apply to liquidations and citing cases); *In re N.P. Mining Co.*, 963 F.2d 1449, 1460 (11th Cir. 1992) ("A number of courts have held that section 959(b) does not apply when a business's operations have ceased and its assets are being liquidated."); *Saravia v. 1736 18th St., N.W., LP*, 844 F.2d 823, 827 (D.C. Cir. 1988) (viewing the statute as applying only to operating businesses, not ones that were in the process of being liquidated)). The Seventh Circuit agreed with these interpretations of the statute. *Id.*

To the extent that the appointed receiver must manage and liquidate the Limited Partnerships, he must do so in a manner which does not violate state law governing their operation. *See In re Wall Tube & Metal Prods. Co.*, 831 F.2d 118, 122 (6th Cir. 1987) (section 959(b) compels a receiver to comply with state public health and safety laws when liquidating receivership property). This Court hereby finds that the facts of the instant case are more in line with *SEC v. Wealth Mgmt. LLC* than *Gillis* or *In re Wall Tube*: in this case, the remaining task for the receiver is to inventory the Zabkas' property and interest in property and manage the Limited Partnerships as

necessary in order to arrange for the sale or other liquidation of those assets to satisfy the Zabkas' tax liabilities. Because Defendants make no claim (and indeed cannot now make a prospective claim) that the receiver has violated Illinois state law in its management and operation of the Limited Partnerships and their underlying assets, the Court finds there to be no legitimate objection to the Government's Proposed Order Appointing a Receiver [#145-3].

Alternatively, the Court finds that there is no conflict between the Proposed Order and 805 Ill. Comp. Stat. 215/703. That statute, part of the Illinois Uniform Limited Partnership Act, governs the rights of a creditor of a partner or transferee and provides, in relevant part:

> (a) On application to a court... by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. ... (b) A charging order constitutes a lien on the judgment debtor's transferable interest. ... (e) This Section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of a judgment debtor's transferable interest.

§ 805 Ill. Comp. Stat. 215/703. As outlined above, this Court has previously determined that the Government's liens attached to all property and rights to property of the Zabkas at the time of their October 6, 2003 assessment tax years 1998 and 1999. At that

time, the Zabkas' property and rights to property included their 100 percent ownership interest in the Limited Partnerships. The state law statute at issue describes a charging order as the exclusive remedy "by which a judgment creditor of *a* partner or transferee may satisfy a judgment out of a judgment debtor's transferable interest." 805 Ill. Comp. Stat. 215/703(e) (emphasis added). The plain language of that statute – which refers to a judgment creditor of *an individual partner* – demonstrates that it was designed to protect other partners in a partnership when one, but perhaps not all, of the partners had become encumbered with a judgment creditor. In that respect, the Court finds that the state statute is irrelevant to the circumstances of the instant case because the Government's federal tax lien attached to the Zabkas' 100 percent ownership interest of the Limited Partnerships. Accordingly, the Court finds there to be no conflict between the Government's Motion [#145] and 805 Ill. Comp. Stat. 215/703.

As indicated above, two separate assessments were made for tax years 1998 and 1999 and 1996 and 1997. If assets remain after federal tax liens associated with years 1998 and 1999 have been enforced, the Receiver is hereby directed to submit a report detailing that surplus to the Court. In its report, the Receiver would: (1) report any assets remaining after the tax liability for years 1998 and 1999 has been satisfied and (2) address any proposed further enforcement of liens associated with tax years 1996 and 1997.

CONCLUSION

For the aforementioned reasons, the Govern-

ment's Motion for Appointment of a Receiver [#145] is GRANTED. The Government is DIRECTED to submit a supplemental Proposed Order that incorporates the above wording within 14 days.

Entered this 11th day of September, 2012.

/s/ Michael M. Mihm
Michael M. Mihm
United States District Judge

APPENDIX F

Filed: 07/28/2014

In the
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 12-2998, 12-3380, 13-1113, 13-2918, 14-1266

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
and
TIMOTHY LOUIS BERTSCHY, Receiver,
Appellee,
v.
ANTIQUES LIMITED PARTNERSHIP, *et al.*,
Defendants-Appellants.

Appeals from the United States District Court
for the Central District of Illinois.
No. 1:10-cv-01078 — **Michael M. Mihm**, *Judge.*

SUBMITTED JUNE 27, 2014 —
DECIDED JULY 28, 2014

Before POSNER, KANNE, and TINDER, *Circuit Judges.*

POSNER, *Circuit Judge.* Before us are five related appeals, presenting both jurisdictional issues and issues of federal tax procedure.

The principal defendants are Robert and Debra Zabka and partnerships they controlled and trans-

ferred property to. The government sued to enforce tax assessments against the Zabkas and tax liens against their property and against property of the partnerships. The district judge ruled that the assessments (amounting to several million dollars) were valid and likewise the tax liens, and that when the Internal Revenue Service had made the assessments the liens had attached to all the Zabkas' personal property and to all their rights to property, including their ownership interests in the partnerships. In the light of these rulings the government filed a motion for the appointment of a receiver who would manage the partnerships and sell their assets to enable the assessments to be satisfied.

That motion was filed in April of 2012. In June the court ordered briefing of the motion, denied motions by the defendants to reconsider the court's calculation of the unpaid assessments, and directed the court clerk to enter judgment in the case. The clerk entered an order that is captioned "Judgment in a civil case" and states: "Judgment is entered in favor of the Plaintiff." The docket entry adds: "CASE TERMINATED." The partnership defendants filed a notice of appeal.

Whoever made the docket entry was wrong. The case had not been terminated. The judgment was not a final judgment, because the receiver hadn't been appointed and thus the complete relief to which the prevailing party was entitled had not been ordered. See *Kerr-McGee Chemical Corp. v. Lefton Iron & Metal Co.*, 570 F.3d 856, 857 (7th Cir. 2009); *Buchanan v. United States*, 82 F.3d 706, 708 (7th Cir. 1996). In fact, it wasn't a "judgment" at all, because it neither dismissed the suit nor provided *any* relief to the plaintiff. It clearly was not an appealable

order.

In September 2012, however, the district court granted the motion to appoint a receiver and directed the goverment to file a proposed order appointing one. The Zabkas filed a notice of appeal from the order granting the motion. That appeal was premature too. Although an interlocutory order appointing a receiver is immediately appealable, 28 U.S.C. § 1292(a)(2), the September order was not the appointment of a receiver, but rather a direction to the government to *propose* a receiver for the judge to appoint. The government complied and in November the judge ordered the appointment of the receiver proposed by the government. The partnership defendants filed a timely notice of appeal from that order. In form it was an amendment to the Zabkas' earlier notice of appeal from the August 2012 order, but in substance it was a new notice of appeal and was as-signed a new docket number.

The defendants' appeal from the receiver's appointment was thus their third appeal. The fourth was an appeal they filed in August 2013 challenging the district court's approval of property sales by the receiver, and the fifth, filed in February 2014, was an appeal from an order awarding interim compensation to the receiver. We have, as we'll explain, no jurisdiction over those two appeals.

We do have jurisdiction over the third appeal, the appeal from the appointment of the receiver. The appointment ended the merits phase of the litigation while kicking off a postjudgment collection proceeding. To understand this critical distinction, imagine a simple suit for damages. The original proceeding ends with a $1 million judgment for the plaintiff. That's it; case over. But suppose the defendant

doesn't pay, saying he has no money. The plaintiff can initiate a postjudgment collection proceeding in which he can ask a receiver (if one has been appointed) both to determine the defendant's ability to pay the judgment, and to collect on the plaintiff's behalf as much of the judgment as he can. The collection proceeding would not affect the finality of the earlier damages judgment, a final judgment appealable under 29 U.S.C. § 1291. But the judgment concluding the collection proceeding would likewise be an appealable final judgment. *In re Joint Eastern & Southern Districts Asbestos Litigation*, 22 F.3d 755, 760 (7th Cir. 1994); *Resolution Trust Corp. v. Ruggiero*, 994 F.2d 1221, 1224–25 (7th Cir. 1993); *Central States, Southeast & Southwest Areas Pension Fund v. Express Freight Lines, Inc.*, 971 F.2d 5 (7th Cir. 1992); *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1064–65 (9th Cir. 2010); *Thom-as v. Blue Cross & Blue Shield Ass'n*, 594 F.3d 823, 829 (11th Cir. 2010). As succinctly explained in the *Armstrong* case, "appeals courts have jurisdiction over post-judgment orders, such as a district court might enter pursuant to the jurisdiction it has retained to enforce a prior order." 622 F.3d at 1064. While from the standpoint of the district court a postjudgment proceeding is part of the original proceeding, from the appellate court's standpoint the judgment awarding the plaintiff relief and the final order in the collection proceeding are separate final orders both appealable therefore under section 1291.

The purported judgment terminating the case in June 2012 had not been a final judgment, because an issue in that proceeding — the appointment of a receiver, a critical component of the relief sought by the government — had remained pending. But once the

appointment was made, all the issues presented in the litigation had finally been re-solved, and the fact that collection problems might require further proceedings in the district court did not detract from the finality and therefore appealability of the judgment. But the fourth appeal in this case — the one challenging the district court's approval of property sales by the receiver — was from an interlocutory order in the postjudgment collection proceeding and thus is not within our jurisdiction. This is so even though, as we said, an interlocutory order appointing a receiver is appealable, as is an interlocutory order "refusing to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property." 28 U.S.C. § 1292(a)(2). Parties in other cases have argued that this additional statutory language authorizes appeals from orders en route to winding up the receivership, which could include the sale order in the collection phase of this case. But that would both strain the statutory language and make anything the receiver did appealable immediately, which could flood the courts of appeals with interlocutory appeals. We therefore agree with the courts that have held that appellate jurisdiction over interlocutory orders involving receivers is limited to the three types of order specified in section 1292(a)(2): orders appointing a receiver, orders refusing to wind up a receivership, and orders refusing to take steps to accomplish the purposes for winding up a receivership. See *Commodity Futures Trading Comm'n v. Walsh*, 618 F.3d 218, 225 n. 3 (2d Cir. 2010); *Plata v. Schwarzenegger*, 603 F.3d 1088, 1099 (9th Cir. 2010); *SEC v. Black*, 163 F.3d 188, 194–95 (3d Cir. 1998); *State Street Bank & Trust Co. v. Brockrim, Inc.*, 87 F.3d 1487, 1490–91 (1st Cir.

1996).

Once the district court appointed the receiver, the defendants' focus shifted from objecting to a receiver's being appointed (remember their appeal from the grant of the government's motion to appoint a receiver) to objecting to specific actions that the receiver took after his appointment. But the defendants also wanted to make sure that their challenges to the judge's prior orders were properly before this court. For that they needed to appeal from the appointment of the receiver, a final judgment that thus brought the orders challenged in the first three appeals — the two appeals filed before the district judge appointed the receiver and the third filed immediately after — within our appellate jurisdiction, though only by virtue of the third appeal, which being from a final judgment made the two prior interlocutory orders challengeable in that appeal. The appellate court can reverse a final judgment on the basis of material errors committed by the district judge at any stage in the proceeding in the district court.

The principal argument that the defendants make regarding those orders was that the Zabkas were just limited partners, equivalent to shareholders, and therefore not subject to a tax lien against partnership property. The general partner is a company called Dunamis LLC. A lien on property of a debtor who happens to be a partner (whether or not a lim-ited partner) in a partnership does not attach to property held by the partnership, IRS Revenue Ruling 73-24 (1973), but it can attach to the partner's ownership interest. *United States v. Craft*, 535 U.S. 274, 285–86 (2002); *United States v. Worley*, 213 F.2d 509, 512–13 (6th Cir. 1954). The liens in this case at-

tached to the Zabkas' ownership interests in the partnerships, thus entitling the receiver to sell those interests in order to realize cash from the liens to satisfy the Zabkas' tax obligations.

It's true that the district court authorized the receiver to enforce the government's tax lien by selling *any* assets belonging to the partnerships (though the court ordered the receiver to satisfy the partnerships' other valid obligations before using money from the sale of the assets to pay the Zabkas' tax debt), and that there is a difference between partnership assets and the share of those assets owned by particular partners. But that difference evaporates in this case. The Zabkas are the only owners. Dunamis LLC, the general partner, has no ownership interest; the partnership agreements "specified that Dunamis was a profits-only partner which would receive no ownership or capital interest in the Limited Partnerships."

The fourth and fifth appeals are, respectively, from the district court's order of August 2013 approving property sales by the receiver and from the order of December 2013 granting the receiver fees for and expenses of his work. The December order granted only *interim* compensation; the receiver had not completed his work — the collection proceeding was continuing. An order of interim compensation is an unappealable interlocutory order. *SEC v. Black*, *supra*, 163 F.3d at 194–95; *SEC v. American Principals Holdings, Inc.*, 817 F.2d 1349, 1350–51 (9th Cir. 1987); cf. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin*, 829 F.2d 601, 602 (7th Cir. 1987) (per curiam). The receiver's work continued after the December order, which means that the August order was interlocutory as well; if he

hadn't completed his work of recovering money for the payment of the taxes by December, obviously he hadn't completed it by the previous August. Indeed, within the last few weeks he has rendered his seventeenth status report. Even more recently the defendants have asked the district judge to rule that all their debts to the government have been paid and that the receivership should therefore be terminated. Remember that if the judge refuses to "wind up" the receivership, the order refusing to do so, though interlocutory, will be appealable immediately. But the judge has not ruled yet on the defendants' motion.

The defendants argue that the receiver shouldn't be compensated because he shouldn't have sold the properties — because he sold them for less than two-thirds of their appraised value and therefore in violation of 28 U.S.C. § 2001(b), or because he has sufficient assets from the defendants to be able to pay the government the entire sum that it claims the defendants owe it, or because he sold them in bad faith. By way of remedy they ask for rescission of the judicial deeds that were issued to the buyers of the properties sold by the receiver to monetize the tax liens.

These arguments, besides being premature because there is not yet an appealable judgment in the postjudgment collection proceeding being conducted by the receiver, appear to be frivolous — an alternative basis for concluding that the defendants' challenge to the receivers' actions in the postjudgment collection proceeding does not engage our appellate jurisdiction. *Carr v. Tillery*, 591 F.3d 909, 917 (7th Cir. 2010); *Crowley Cutlery Co. v. United States*, 849 F.2d 273, 276–78 (7th Cir. 1988). The district judge rightly rejected the defendants' attempt to present an appraisal high enough to trigger section 2001(b),

that had been made by an appraiser whom the court had not appointed or approved. And in the absence of a stay, or some other circumstance that would cast a cloud over the receiver's sale of the partnership properties, a closed sale (that is, a sale that has been executed, not just contracted for) of a debtor's assets can't be reopened. *United States v. Buchman*, 646 F.3d 409, 410 (7th Cir. 2011); *Federal Deposit Ins. Corp. v. Meyer*, 781 F.2d 1260, 1264 (7th Cir. 1986); *In re Vetter Corp.*, 724 F.2d 52, 55 (7th Cir. 1983). No stay was issued. Nor was the district judge required to make a finding that the properties had been sold to purchasers in good faith, in the absence of any indication of bad faith. As for the defendants' argument that the receiver shouldn't be compensated because he shouldn't have sold the properties, the time to make the argument is when the receivership ends, thus terminating the postjudgment collection proceeding, or earlier, if and when the district judge refuses to end the receivership.

To conclude, the judgment in appeal 13-1113 — the order that appointed the receiver — is affirmed and the other ap-peals are dismissed. Appeal 13-1113, the one we're affirming, is the only one of which we have jurisdiction because it's the only appealable judgment; the order that appointed the receiver was the last order in the first proceeding and so completed that proceeding. The remaining four appeals were all from unappealable interlocutory orders — although the *issues* presented in the two interlocutory appeals in the first proceeding were within our jurisdiction to resolve be-cause an appeal from a final judgment can challenge earlier orders in the case to the extent that the judgment was based on them.

APPENDIX G

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

UNITED STATES OF AMERICA,	) E-FILED
	) 06 August, 2014
Plaintiff,	)
v.	) Case No. 10-1078
	)
ROBERT K. ZABKA, et al.	)
Defendants,	)

ORDER

This matter is now before the Court on Defendants' Antiques Limited Partnership, Brookstone Hospitality, Limited Partnership, ZFP, Limited Partnership, Robert K. Zabka, Debra Zabka and Dunamis, LLC (collectively "Defendants") "Motion to (1) Determine All Judgments Fully Satisfied; Dissolve the Receivership; (3) Return All Assets, Books and records to Dunamis, LLC." (ECF No. 328). For the reasons set forth below, the Defendants' Motion is DENIED.

BACKGROUND

This suit was brought by the Government to obtain judgment and to collect unpaid federal income tax assessments against Robert and Debra Zabka ("Zabkas"). (ECF No. 1). The Government also sought to enforce tax liens against the Zabkas' property. *Id.*

On February 25, 2011, the Court found that Zabkas were liable to the Government based on unpaid assessments of federal income tax, penalties, and interest, in the amount of $834,476.00 for the 1996 tax year, and $934,982.26 for the 1997 tax year. (ECF No. 64).

On July 14, 2011, this Court granted the Government's Motion for Partial Summary Judgment and found that the Zabkas are liable "for unpaid assessments of income tax, penalties, and interest in the amount of $570,569.52 for the year 1998 and in the amount of $1,096,965.45 for the year 1999 plus interest and other statutory additions accruing from and after January 18, 2011." (ECF No. 111). The amount due for these tax years was reduced as a result of the IRS filing a Notice of IRS Adjustments, explaining that the application of partial abatements proposed during the audit reconsideration in 2004, as well as corresponding partial abatements of failure-to-pay penalties that were assessed against the Zabkas in 2005 and 2007, after the audit reconsideration, would reduce the amounts owed for tax year 1998 to $458,249.15 and $483,722.31 for tax year 1999, plus interest and other statutory additions accruing for both years from and after May 31, 2013. (ECF No. 254).

On March 30, 2012, the Court found that federal tax liens arose when the IRS made tax assessments against the Zabkas and that those liens have attached to all personal property and rights to property of the Zabkas, including all of their ownership interests in the Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Partnership. (ECF No.144).

The Defendants now move for, among other

things, a determination that all judgments are satisfied based on a recently allowed net operating loss carryback processed by the IRS for the Zabkas' 2000 tax year in the amount of $926,576.00. (ECF No. 328). Notably, the Zabkas concede that the net operating loss carryback would not cover the entire judgment for the 1998 and 1999 tax years, nor would it address the amounts due for the 1996 and 1997 tax years. (*See* ECF No. 328 at 2). However, the Zabkas note that this amount in addition to the amount collected by the Receiver would satisfy the judgment for the 1998 and 1999 tax years. In response, the Government explains, among other things, that the tax abatements are in the process of being reversed by the IRS.

Discussion

The Federal Rules of Civil Procedure enable a party to obtain relief from a final order if the judgment has been "satisfied, released, or discharged." *See* Fed.R.Civ.P. 60(b)(5). In this case, the Defendants seek to have the Court enter a satisfaction of judgment based on the fact that they were recently allowed a net operating loss carryback of $926,576.00 that could be applied to amounts owed for tax years 1998 and 1999. Initially, the Court raised the issue of whether or not it had jurisdiction over this matter because it was on appeal. That question was mooted when the United States Court of Appeals for the Seventh Circuit entered its Order dated July 28, 2014, affirming this Court's Order appointing the receiver and dismissing the Defendants' other appeals. *United States of America and Timothy Louis Bertschy v. Antiques Limited*

Partnership, et al., Case Nos. 12-2998, 12-3380, 13-1113, 13-2918, 14-1266 (7th Cir. July 28, 2014).

During the hearing held on July 25, 2014, the Defendants acknowledged that the allowance of the net operating loss carryback had been, or was in the process of being, reversed. Defendant did not argue that the Government was prohibited from taking such action. However. the Defendants did argue that equity provides a basis for this Court to reduce, or satisfy, the judgment. But, in the end, Defendants conceded that this matter was controlled by law. Nonetheless, the Defendants pressed this Court to grant their Motion.

The Government for its part has acknowledged that the net operating loss carryback was approved by an IRS employee, but the employee's actions were unauthorized and improper, and the abatements are legally void. (ECF No. 333 at 2). The Government also explained that the abatements are in the process of being reversed. *Id.*

The Court finds that it need not determine whether or not the abatements were legally void when the IRS employee authorized them. The Court makes no findings of facts regarding the transactions that resulted in this underlying motion. The following is simply a summary based on the Parties' submissions to place context on this issue that has arisen.

On or around March 28, 2014,[1] the Zabkas filed a request for adjustment for the periods of December 31, 1998, through December 31, 1999, with the IRS. (ECF No. 328-1 at 1). The adjustment was processed

[1] The Zabkas initially filed the amended tax returns on or around December 23, 2013, but additional documentation had to be submitted. (ECF No. 333-1 at 1-2).

on or around June 11, 2014, and the net operating loss [for tax period ended December 31, 2000] was applied to the gains in the years 1998 and 1999. *Id.* This still resulted in a tax liability for the Zabkas for 1998 and 1999, but it was substantially reduced. (ECF No. 328-1 at 4-9). In addition, there was a remaining net operating loss of $93,367.00 that was available to be carried forward. *Id.*

IRS Employee Donna Almanza ("Almanza") provided an affidavit in support of the Government's position. (ECF No. 333-1). In her affidavit, Almanza explains that she was the employee assigned to process the Zabka's request for adjustment. *Id.* Almanza further explained that she did not examine the Zabka's 2000 tax return but noted that there was a net operating loss for that year that had not been absorbed. (ECF No. 333-1 at 2). She saw a litigation freeze on the Zabka's 1998 and 1999 tax years, but was wrongly informed that it would be appropriate to apply the net operating loss from 2000 tax year to the 1998 and 1999 tax year as long as there was no refund being issued. (ECF No. 333-1 at 3). Because of that, she made the adjustment. *Id.* She was subsequently informed that the adjustments were void and had to be reversed. (ECF No. 333-1 at 4). Finally, she explains that the process to reverse the adjustments has started. *Id.*

The Defendants' Motion is premised on the fact that the IRS has conceded a net operating loss for tax year 2000. The fact that the abatement is, or will be, reversed ends this inquiry. For whatever reason, the IRS and Government are opposing the application of the net operating loss at this time. Ultimately, the Zabkas *may* proceed through the IRS system and attempt to receive the tax abatement. However, at

this time the Court finds that the Zabkas have not satisfied the judgment. Accordingly, the Defendants request that the Court enter an order finding that all Judgments are fully satisfied is DENIED. Because the remaining relief sought by the Defendants is based on a finding that the Judgments are satisfied, the entire "Motion to (1) Determine All Judgments Fully Satisfied; Dissolve the Receivership; (3) Return All Assets, Books and records to Dunamis, LLC" (ECF No. 328) is DENIED.

The Court had previously stayed the Receivership's activities pending the resolution of this Motion. Having now resolved the Motion, the Court finds that the receivership activities should continue. As noted during the August 5, 2014, status hearing, the Court directs the parties to confer on the receivership activities that need to be completed and be prepared to discuss that matter during the next status conference scheduled for August 27, 2014, at 11:00 A.M.

Conclusion

For reasons stated herein, Defendants "Motion to (1) Determine All Judgments Fully Satisfied; Dissolve the Receivership; (3) Return All Assets, Books and records to Dunamis, LLC" (ECF No. 328) is DENIED. The Court's stay on receivership activities is LIFTED.

ENTERED this 6th day of August 2014.

/s/ Michael M. Mihm
Michael M. Mihm
United States District Judge

APPENDIX H

Filed: 03/06/2015

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ORDER

Submitted February 25, 2015
Decided March 6, 2015

Before
RICHARD A. POSNER, *Circuit Judge*
MICHAEL S. KANNE, *Circuit Judge*
JOHN DANIEL TINDER, *Circuit Judge*

No. 14-3177 UNITED STATES OF AMERICA,
Plaintiff – Appellee
v.
ROBERT K. ZABKA, et al.,
Defendants – Appellants

Originating Case Information:
District Court No: 1:10-cv-01078-MMM-JEH
Central District of Illinois
District Judge Michael M. Mihm

The following are before the court:

1. UNITED STATES' DOCKETING STATEMENT, filed on October 20, 2014, by counsel for the appellee.

2. RESPONSE TO PLAINTIFF-APPELLEE'S MOTION TO DISMISS BY DEFENDANTS-APPEL-

LANTS, filed on November 4, 2014, by counsel for the appellants.

3. UNITED STATES' REPLY TO APPELLANTS' OPPOSITION TO DISMISSAL OF THIS APPEAL, filed on November 24, 2014, by counsel for the appellee.

4. MOTION FOR PERMISSION TO FILE A SUR REPLY, filed on December 15, 2015, by counsel for the appellants.

5. UNITED STATES' RESPONSE IN OPPOSITION TO APPELLANTS' MOTION TO FILE A SURREPLY TO OUR REPLY TO THEIR OPPOSITION TO DISMISSAL OF THIS APPEAL, filed on December 16, 2014, by counsel for the appellee.

6. REPLY IN SUPPORT OF MOTION FOR PERMISSION TO FILE SUR REPLY, filed on December 18, 2014, by counsel for the appellants.

We have reviewed the government's docketing statement, in which it requests dismissal of this appeal or summary affirmance, the parties' responses and replies, and the relevant district court orders. We conclude that further briefing would not be helpful to the court's consideration of the issues in this appeal. See *Taylor v. City of New Albany,* 979 F.2d 87 (7th Cir.1992); *Mather v. Village of Mundelein,* 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be a waste of time and

no member of the panel desires briefing or argument).

We have jurisdiction to review the district court's orders refusing to dissolve the receivership. See 28 U.S.C. § 1292(a)(2); *United States v. Antiques Limited Partnership,* 760 F.3d 668, 671 (7th Cir. 2014). The district court did not err when it determined that appellants had not yet satisfied the judgments. As a result, we summarily **AFFIRM** the district court's orders refusing to dissolve the receivership. Because the receivership remains in place, the district court's orders relating to the receiver's compensation or sale of property are still interim orders, see *Antiques Limited Partnership,* 760 F.3d at 672-73, and we decline to review them at this time.

The motion to file a sur-reply is **GRANTED** to the extent that the panel considered appellants' sur-reply.

APPENDIX I

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v.	) E-FILED) 29 November, 2017)) Case No. 10-1078-) MMM-JAG
ROBERT K. ZABKA, DEBRA ZABKA, BROOKSTONE HOSPITALITY LIMITED PARTNERSHIP, ANTIQUES LIMITED PARTNERSHIP, ZFP LIMITED PARTNERSHIP PRARIE STATE BANK & TRUST, N.A., FIRST MID-ILLINOIS BANK & TRUST, N.A., BANK OF AMERICA, N.A., ELEOS, LLC, and DUNAMIS, LLC, Defendants.	)))))))))))))
ROBERT K. ZABKA and DEBRA ZABKA, Counterclaim-Plaintiffs, v.	)))))
UNITED STATES OF AMERICA, Counterclaim-Defendant.	)))

FINAL ORDER

Cause coming to be heard upon the Final Report of Receiver and Receiver's Fifth Application for Compensation, the parties, having been given notice and an opportunity to respond, and the Court being fully advised,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Final Report of Receiver is approved.

2. The management and control of Antiques Limited Partnership, ZFP Limited Partnership, and Brookstone Hospitality Limited Partnership (the "Limited Partnerships") is returned to those entities such as it was before the Order Appointing Receiver.

3. The frozen funds in the checking accounts of the Limited Partnerships located at First Neighbor Bank in Charleston, Illinois, in the amounts of $55.84 for Brookstone Hospitality Limited Partnership, $20.89 for ZFP Limited Partnership, and $29.60 for Antiques Limited Partnership, is released to the Limited Partnerships.

4. After payment of his fees and expenses, the Receiver shall make payment of the remaining funds to the U.S. Department of Justice. The memo line of the check(s) should include: CMN 2008102081 and be mailed to:

For regular United States mail delivery:
Department of Justice ATTN: TAXFLU
P.O. Box 310 - Ben Franklin Station
Washington, D.C. 20044

For courier (FEDEX, UPS, etc) delivery:
Department of Justice ATTN TAXFLU
Room 6647 - Judiciary Center Building

555 Fourth Street, N.W.
Washington, D.C. 20001

5. Timothy L. Bertschy, the Receiver, is and shall be fully relieved and discharged of all of his duties and obligations under the orders entered in this matter and any other duties or obligations incident to his appointment or service as Receiver in this action.

6. All actions taken by the Receiver, his attorneys and his financial advisor(s) in this matter were taken in the proper administration of the Receivership.

7. Neither the Receiver nor any of his attorneys, accountants or consultants shall have any liability to any person or entity for any action taken in connection with carrying out the procedures set forth in this Order or any other orders entered in this action, or otherwise taken in connection with the Receiver's appointment or service in this action. The Receiver and his attorneys, accountants, and consultants are hereby fully released and discharged from any and all claims and causes of action which might be brought against them for matters arising from their administration of the assets turned over to the Receiver, including, without limitation, any claim concerning or relating to the filing of any local, state, or federal tax returns for Brookstone Hospitable Limited partnership, Antiques Limited Partnership, and ZFP Limited Partnership and/or the reporting of any income assets or tax consequences to any person or entity.

8. The Receiver is authorized and directed to return materials from the Limited Partnerships to those entities or their representatives. The Receiver

is authorized to maintain a copy of said records and to dispose of the same pursuant to his firm's record retention policy.

9. The receiver's Fifth Application for Compensation is granted. Additionally, the Receiver reports incurring $1,897.50 in fees and $95.77 in expenses since the filing of the Fifth Application for Compensation and requests payments for these items. The Receiver's request is granted.

10. The Receiver is authorized to withdraw/transfer from the Receivership accounts an amount equal to $37,684.00 in fees, and $2,100.72 in expenses, from a total of $39,784.72.

11. This Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

Entered this 29th day of November, 2017.

/s/ Michael M. Mihm
Honorable Judge Michael M. Mihm

APPENDIX J

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v.	) FILED) NOV 30 2017)) Case No. 10-1078-) MMM-JAG
ROBERT K. ZABKA, DEBRA ZABKA, BROOKSTONE HOSPITALITY LIMITED PARTNERSHIP, ANTIQUES LIMITED PARTNERSHIP, ZFP LIMITED PARTNERSHIP PRARIE STATE BANK & TRUST, N.A., FIRST MID-ILLINOIS BANK & TRUST, N.A., BANK OF AMERICA, N.A., ELEOS, LLC, and DUNAMIS, LLC, Defendants.	)
ROBERT K. ZABKA and DEBRA ZABKA, Counterclaim-Plaintiffs, v.	)
UNITED STATES OF AMERICA, Counterclaim-Defendant.	)

JUDGMENT IN A CIVIL CASE

DECISION BY THE COURT. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED On July 14, 2011, this Court entered an Order granting summary judgment in favor of the Plaintiff, the United States of America, and against the Defendant Robert K. Zabka and Debra Zabka ("Zabkas") finding the Zabkas responsible for unpaid assessment of income tax, penalties, and interest in the amount of $570,569.52 for the year 1998 and in the amount of $1,096,965.45 for the year 1999, plus interest and other statutory additions accruing from and after January 18, 2011. (ECF No. 111).

IT IS FURTHER ORDERED AND ADJUDGED On March 30, 2012, this Court entered an Order finding that federal tax liens arose when the IRS made tax assessments against the Zabkas and that those liens have attached to all personal property and rights to property of the Zabkas, including all of their ownership interests in the Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Partnership. (ECF No. 144).

IT IS FURTHER ORDERED AND ADJUDGED On November 20, 2012, and supplemented on January 23, 2013, this Court appointed a Receiver to oversee the identification and sale of the assets of the Zabkas. (ECF Nos. 201 and 226).

IT IS FURTHER ORDERED AND ADJUDGED Beginning after the appointment of the Receiver, the Court made various other rulings related to the identification and sale of the assets.

The Final Order having been entered on November 29, 2017.

Dated: 11/30/2017

s/Kenneth A. Wells
Kenneth A. Wells
Clerk, U.S. District Court

APPENDIX K

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ROBERT K. ZABKA, DEBRA ZABKA, BROOKSTONE HOSPITALITY LIMITED PARTNERSHIP, ANTIQUES LIMITED PARTNERSHIP, ZFP LIMITED PARTNERSHIP PRARIE STATE BANK & TRUST, N.A., FIRST MID-ILLINOIS BANK & TRUST, N.A., BANK OF AMERICA, N.A., ELEOS, LLC, and DUNAMIS, LLC, Defendants.	)	FILED JUN 08 2018 Case No. 10-1078-MMM-JAG
ROBERT K. ZABKA and DEBRA ZABKA, Counterclaim-Plaintiffs, v. UNITED STATES OF AMERICA, Counterclaim-Defendant.	)	

AMENDED
JUDGMENT IN A CIVIL CASE

DECISION BY THE COURT. This action was decided by Judge Michael Mihm on Motions for Summary Judgment.

Plaintiff United States of America ("Plaintiff") recovers from Defendants Robert K. Zabka and Debra Zabka ("Zabkas") unpaid assessments of income tax, penalties, and interest in the amount of $834,476.00 for the year 1996 and in the amount of $934,982.26 for the year 1997, plus interest and other statutory additions accruing from and after April 15, 2010.

Furthermore, Plaintiff, the United States of America recovers from the Zabkas unpaid assessment of income tax, penalties, and interest in the amount of $570,569.52 for the year 1998 and in the amount of $1,096,965.45 for the year 1999, plus interest and other statutory additions accruing from and after January 18, 2011.

Furthermore, these liens attach to all personal property and rights to property of the Zabkas, including all of their ownership interests in the Brookstone Hospitality Limited Partnership, Antiques Limited Partnership, and ZFP Partnership. The Court appointed a receiver to oversee the identification and sale of the assets of the Zabkas.

Dated: 6/8/2018

s/Denise Koester
Denise Koester
Acting, Clerk, U.S. District Court

APPENDIX L

Filed 10/03/2019

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with
Fed. R. App. P. 32.1

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604
Argued September 12, 2019
Decided October 3, 2019

Before
JOEL M. FLAUM, *Circuit Judge*
FRANK H. EASTERBROOK, *Circuit Judge*
DANIEL A. MANION, *Circuit Judge*

Nos. 18-1454 & 18-1916

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
and

TIMOTHY LOUIS BERTSCHY,
Receiver-Appellee,
v.

ROBERT K. ZABKA, et al.,
Defendants-Appellants.

Appeals from the United States District
Court for the Central District of Illinois.
No. 10-cv-01078
Michael M. Mihm, *Judge.*

ORDER

These consolidated appeals are the seventh and eighth arising from this litigation. The United States brought this action to enforce tax assessments against the Defendants and to foreclose tax liens. Because we find Appellants fail to raise any appealable issues arising from the judgment on appeal, we dismiss the appeals for lack of jurisdiction.

The history of this litigation is long and complicated, but a summary suffices here. The government brought this action to enforce tax assessments against Defendants Robert and Debra Zabka. The government also sought to foreclose tax liens on property owned by the Zabkas and by the limited partnership Defendants. In 2014, we resolved the first five appeals arising out of this litigation. *United States v. Antiques Ltd. P'ship*, 760 F.3d 668 (7th Cir. 2014).[1] We affirmed the district court's order appointing a receiver and its authorization of the receiver to enforce the tax liens by selling property owned by the limited partnerships. We recognized that "once the appointment was made, all the issues presented in the litigation" — including the validity of the tax liens and assessments and the amount of tax liability — "had finally been resolved." *Id.* at 671. Therefore, the district court's order appointing a receiver was a final appealable order that ended the merits phase of this litigation and initiated the post-judgment collection phase. *Id.* We also affirmed the receiver's authorization to sell the partnerships' properties. *Id.* at 672. That order was

[1] We resolved a sixth appeal in a 2015 unpublished order. *United States v. Zabka*, No. 14-3177 (7th Cir. Mar. 6, 2015).

an unappealable interlocutory order. But the issue of the receiver's authorization to sell the partnerships' properties could be reviewed on appeal of the final judgment to the extent that judgment was based upon the receiver's authorization. *Id.* at 672, 674.

The receiver liquidated the partnerships' assets to enforce the tax liens. Several real properties owned by the partnerships were sold over the course of four years. The district court entered an order approving each sale. The receiver filed his final report in October 2017. The district court approved the final report and wrapped up the receivership in an order issued November 29, 2017, and judgment was entered on November 30. The Zabkas and the limited partnerships separately appealed that judgment, resulting in these consolidated appeals.

Appellants endeavor to challenge the sales as violations of Illinois partnership law and to contest the amount of their tax liability. We lack jurisdiction to consider either argument. Our appellate review is limited to final decisions of the district courts. 28 U.S.C. § 1291. It is true that an appeal from a final judgment "draws in question all prior non-final orders and all rulings which produced the judgment." *House v. Belford*, 956 F.2d 711, 716 (7th Cir. 1992). But Appellants challenge the rulings authorizing the receiver to sell the limited partnerships' property and determining the Zabkas' tax liability. Those rulings did not produce the order now on appeal; they produced the final merits judgment and the order appointing the receiver. We affirmed in *Antiques Limited* that all merits issues were finally decided at the time the district court appointed the receiver in 2014, which included the liability amount. 760 F.3d at 671. The receiver's authorization to satisfy the

government's liens by liquidating the partnerships' assets was also affirmed by this court in *Antiques Limited* as an interlocutory ruling subsumed within the final judgment. 760 F.3d at 672. Simply put, Appellants cannot use an appeal from the final judgment of the collection proceeding to challenge decisions underlying the merits judgment and affirmed in earlier appeals.

Because Appellants fail to raise any appealable issues, we lack jurisdiction over these appeals. Accordingly, we DISMISS the appeals.

APPENDIX M

Filed:10/03/2019

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

FINAL JUDGMENT

October 3, 2019

Before: JOEL M. FLAUM, Circuit Judge
FRANK H. EASTERBROOK, Circuit Judge
DANIEL A. MANION, Circuit Judge

Nos. 18-1454 and 18-1916

UNITED STATES OF AMERICA, Plaintiff-Appellee, and	Appeals from the United States District Court for the Central District of Illinois.
TIMOTHY LOUIS BERTSCHY, Appellee,	No. 1:10-cv-01078-MMM
v.	Michael M. Mihm, Judge.
ROBERT K. ZABKA, et al., Defendants-Appellants.	

We **DISMISS** the appeals, with costs, in accordance with the decision of this court entered on this date.