

1 KATHRYN KENEALLY  
Assistant Attorney General

2 CHARLES M. DUFFY  
3 Trial Attorney, Tax Division  
U.S. Department of Justice  
4 P.O. Box 683  
Ben Franklin Station  
5 Washington, D.C. 20044-0683  
Telephone: (202) 307-6406  
6 Email: [charles.m.duffy@usdoj.gov](mailto:charles.m.duffy@usdoj.gov)  
Western.taxcivil@usdoj.gov  
7 *Attorneys for the United States of America*

8 JOHN S. LEONARDO  
United States Attorney  
9 District of Arizona  
*Of Counsel*

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 DISTRICT OF ARIZONA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 JOSEPH J. LIPARI, EILEEN H. LIPARI and  
EXETER TRINITY PROPERTIES, L.L.C.,

17 Defendants.  
18

Civ. No. 10-CV-08142-JWS

**UNITED STATES' MOTION TO  
DISMISS THE ASSESSMENT CLAIMS  
MADE AGAINST DEFENDANTS  
JOSEPH AND EILEEN LIPARI FOR  
THEIR SEPARATE 1997 TAX YEARS  
WITHOUT PREJUDICE**

19  
20 The United States moves the Court pursuant to Federal Rule of Civil Procedure 41(a)(2) to  
21 dismiss, without prejudice, the claims to reduce 1997 income tax assessments to judgment for Joseph  
22 Lipari in Claim 2 in the complaint and Eileen Lipari in Claim 3. All other claims in Claims 2 and  
23 3 against the Liparis remain and the United States does not seek dismissal of any other claims in the  
24 complaint.

25 The background of this case is as follows. In the complaint filed herein, the United States  
26 sought to reduce various assessments to judgment against Joseph and Eileen Lipari ("the Liparis")  
27 and also to foreclose the Internal Revenue Service's ("IRS") tax liens on the Liparis' residence that  
28 they "transferred" to defendant Exeter Trinity Properties, L.L.C. ("Exeter").

1 There are three claims in the complaint that relate to the IRS's assessments against the Liparis.  
2 The First Claim sets forth the assessments made against the Liparis jointly for their 1993 and 1998  
3 through 2004 income tax years. The Second Claim sets forth assessments made against Joseph  
4 Lipari for his separate 1994 through 1997 income tax years. The Third Claim sets forth assessments  
5 made against Eileen Lipari for her separate 1994 through 1997 income tax years.

6 The United States previously moved for summary judgment on all of the assessment claims  
7 and all of the foreclosure claims (which are set forth in the Fourth, Fifth and Sixth Claims of the  
8 complaint). In its March 12, 2012 order, the Court granted the United States' summary judgment  
9 as to all of the assessment claims *except* the assessments made for Joseph Lipari's 1997 tax year at  
10 issue in the Second Claim and those made for Eileen Lipari's 1997 tax year at issue in the Third  
11 Claim. In the order, the Court denied the United States' motion for summary judgment on the  
12 foreclosure claims and the cross-motion for summary judgment filed by Exeter on those claims.

13 In the instant motion, the United States moves the Court to dismiss, without prejudice, only  
14 the claims to reduce tax and other assessments to judgment pending against Joseph Lipari for his  
15 1997 tax year at issue in the Second Claim and the assessment claims pending against Eileen Lipari  
16 for her 1997 tax year at issue in the Third Claim. A proposed Order is lodged herewith.

17 If the Court grants the instant motion, then only the foreclosure claims (*i.e.*, the Fourth, Fifth  
18 and Sixth Claims) would have to be tried in this matter.

19 DATED this 27th day of July, 2012.

20 KATHRYN KENEALLY  
21 Assistant Attorney General, Tax Division  
22 U.S. Department of Justice

23 By: /s/ Charles M. Duffy  
24 CHARLES M. DUFFY  
25 Trial Attorney, Tax Division

26 Of Counsel:

27 JOHN S. LEONARDO  
28 United States Attorney  
(Attorneys for the United States)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27th day of July, 2012, I served the following attorney of record using the Court's CM/ECF system:

John Friedeman, P.C.  
5103 E. Thomas Road  
Phoenix, Arizona 85018

I further certify that on the same day, I mailed by U.S. Postal Service the foregoing to the following party who is not represented by counsel:

Joseph J. Lipari  
156 Johnson Hill Drive  
Waynesville, NC 28786

/s/ Charles M. Duffy  
Charles M. Duffy  
Trial Attorney, Tax Division  
U.S. Department of Justice

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH J. LIPARI, EILEEN H. LIPARI and  
EXETER TRINITY PROPERTIES, L.L.C.,

Defendants.

Civ. No. 10-CV-08142-JWS

**ORDER GRANTING UNITED STATES’  
MOTION TO DISMISS THE  
ASSESSMENT CLAIMS MADE  
AGAINST THE LIPARIS FOR THEIR  
1997 TAX YEARS WITHOUT  
PREJUDICE**

BASED ON THE United States’ motion to dismiss filed on July 27th, 2012 and good cause appearing therefore, the claims to reduce assessments to judgment against Joseph Lipari for his 1997 tax year at issue in the Second Claim and the assessment claims pending against Eileen Lipari for her 1997 tax year at issue in the Third Claim are dismissed *without* prejudice.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JOHN W. SEDWICK  
United States District Judge

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