

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**SUSAN F. BEARD,**  
*Plaintiff-Appellee,*

v.

**UNITED STATES,**  
*Defendant-Appellant.*

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2011-5107

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Appeal from the United States Court of Federal  
Claims in case no. 10-CV-577, Judge Charles F. Lettow.

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**ON MOTION**

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Before BRYSON, SCHALL, and PROST, *Circuit Judges.*  
SCHALL, *Circuit Judge.*

**ORDER**

The United States moves for a stay, pending appeal,  
of proceedings in an action filed by Susan F. Beard in the  
United States Court of Federal Claims in which Beard

seeks a refund of payments made to the Internal Revenue Service (IRS) on penalties imposed against Beard under 26 U.S.C. § 6672 for unpaid employment taxes. Beard opposes the motion. The government replies.

The government's appeal, which is interlocutory and was filed pursuant to 28 U.S.C. § 1292(a), is from a decision by the Court of Federal Claims that (1) under 26 U.S.C. § 6331 enjoined the government from proceeding in a later-filed case against Beard in the United States District Court for the Western District of Texas for collection of the same employment tax penalties and (2) denied the government's motion to suspend the Court of Federal Claims case until completion of the district court case. *Beard v. United States*, 99 Fed. Cl. 147 (2011). The Court of Federal Claims subsequently denied a motion by the government for a stay of proceedings pending appeal.

The party requesting a stay bears the burden of showing that the circumstances justify an exercise of the court's discretion based on consideration of four factors, the first two of which are the most critical: (1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

Without prejudicing the ultimate disposition of this case by a merits panel, we conclude based upon the papers submitted that the government has not met its burden of showing it would be irreparably harmed in the absence of a stay of the Court of Federal Claims proceedings.

Accordingly,

IT IS ORDERED THAT:

The motion for a stay, pending appeal, of the proceedings before the Court of Federal Claims is denied.

FOR THE COURT

NOV 03 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Farley P. Katz, Esq.  
Ellen Page Delsole, Esq.

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**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

NOV 03 2011

JAN HORBALY  
CLERK