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CONFIDENTIAL

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Illinois Independent Tax Tribunal
Attention: Chief ALJ James Conway
160 North LaSalle Street
Room N506
Chicago, IL 60601

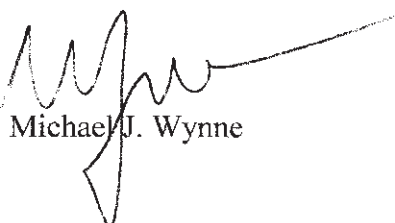
Re: Petition of Jennifer and Michael Rothman

Dear Judge Conway:

Enclosed please find the Petition of Jennifer and Michael Rothman (the "Rothmans") of the Notices of Deficiency ("NODs") issued to Jennifer for 2013 and to Michael and Jennifer for 2016 under the Illinois Income Tax Act ("ITA"). Also enclosed are two copies of the Petition and a check in the amount of \$500.00 to pay the filing fee for the Petition. We are also separately sending a copy of the Petition to the Tax Tribunal by email.

Please note that the Rothmans have two other petition-proceedings pending in the Tax Tribunal, docketed to ALJ Barov and numbered 18-TT-30 and 18-TT-132, also arising under the ITA, for the 2014 and 2015 tax years.

Respectfully submitted,



Michael J. Wynne

Enclosures

cc: Colin Bowes-Carlson, Illinois Department of Revenue

NAI-1526336878v1

**IN THE ILLINOIS
INDEPENDENT TAX TRIBUNAL**

Jennifer Rothman and Michael Rothman

Petitioners,

v.

Illinois Department of Revenue,

Respondent.

Case No.

PETITION

Petitioners, Jennifer Rothman (“Jennifer”), an individual, and Michael Rothman (“Michael”), an individual, jointly referred to herein as “the Rothmans,” complain of the Respondent, the Illinois Department of Revenue (“Department” or “IDOR”), as follows:

Jurisdiction

1. Jennifer files this action to protest a determination of the Department reflected on a Notice of Deficiency (“NOD”) issued on December 16, 2021, under the Illinois Income Tax Act (“IITA”) [35 ILCS 5/101 et seq.], for the 2013 personal income tax year, where the amount at issue exceeds \$15,000, exclusive of penalties and interest. *See, Exhibit A.*
2. Jennifer’s action is filed within sixty days of the date the NOD issued for 2013. The Illinois Independent Tax Tribunal (“Tax Tribunal”) therefore has jurisdiction over this action under section 1-45 of the Illinois Independent Tax Tribunal Act of 2012 (“Tax Tribunal Act”). 35 ILCS 1010/1-45.
3. Jennifer and Michael file this action to protest a determination of the Department reflected on a NOD issued on December 17, 2021, under the IITA, for the 2016 personal income tax year, where the amount at issue exceeds \$15,000, exclusive of penalties and interest. *See, Exhibit B.*

4. Jennifer and Michael's action is filed within sixty days of the date the NOD issued for 2016. The Tax Tribunal therefore has jurisdiction over this action under section 1-45 of the Tax Tribunal Act. 35 ILCS 1010/1-45.

The Department's "Sandwich" Scheme

5. On February 27, 2017, the Department notified the Rothmans that it would audit their nonresident Illinois personal income tax returns for the 2014 and 2015 tax years.
6. Stating no reason, the Auditor denied the Rothmans' request for an extension of time to respond to the initial Information Document Request ("IDR") issued February 27, 2017 for which a reply was due March 30, 2017. Instead, the Auditor issued a second IDR on March 30, 2017. During 2017, the Rothmans replied to the best of their ability with documentation in their possession to three IDRs and one subpoena issued to them by the Department. Before October 30, 2017, with regard to certain outstanding information, the Rothmans' counsel at the time advised the Auditor that the Rothmans were requesting information not in their possession from the third parties.
7. An October 5, 2017 Department document, titled "IL-1040 Auditor's Report" informed the Rothmans that the amount of tax potentially due for the two years was just under \$44,000, and that a late payment penalty would be imposed. By email of October 30, 2017, the Rothmans' counsel advised the Auditor that, as the Auditor relayed to his supervisor by email, the Rothmans "will agree to tax and interest" and were "requesting an abatement of the Late Pay Penalty."¹
8. On October 30, 2017, as the Auditor was conveying to his supervisor the Rothmans' agreement to pay tax and interest and seek abatement of the late payment penalty, the Auditor was also requesting "a Negligence Penalty be added." Part of the stated basis for recommending the penalty was that the Rothmans had, in response to a subpoena, provided "no manifests" for their flights.²

¹ 18-TT-30, DOR002214

² 18-TT-30, DOR002214

9. The Auditor either did not know, or did not disclose, that the Rothmans were not the operators of the flights and would not have the records sought, that manifests are not required for non-carrier, non-commercial flights, and therefore, that the Rothmans could not have provided the manifests. Nevertheless, the Auditor argued that “Our Regulations (100.3020) clearly show that presence is a factor and they thereby intentionally disregarded it to avoid taxation.” He therefore urged in his email “the TP has not provided anything to us to NOT make a negligence assessment.”³
10. The Auditor acknowledged in his email that the taxpayers “had the usual administrative things they “checked off” to change their residency; driver’s licenses, voter’s registrations, vacation homes purchased, no Illinois homestead, etc.” but that they “provided no evidence, other than what helped their case.”⁴ He did not disclose that Florida driver’s licenses and voter registrations had been provided for 2013 *and* 2017.
11. The Auditor did not consider that, among other factors:
- (i) The Auditor’s own stance on extensions of time for IDRs and skepticism of any information favoring the Rothmans - like his rejection of *the usual things* taxpayers may provide as proof of changed domicile under regulation 86 Ill. Admin. Code § 100.3020 – had indicated to the Rothmans that the amount of tax and interest proposed for 2014 and 2015 would be dwarfed by the cost to the Rothmans of continuing document production for the audit, let alone to additionally contest adverse audit findings the Auditor’s attitude suggested would be made.
 - (ii) There were no records the Rothmans were specifically required to maintain by the IITA and the regulations, as “The type and amount of proof that will be required in all cases to establish residency or nonresidency or to rebut or overcome a presumption of residence cannot be specified by general regulation, but will depend largely on the circumstances of each particular case.” 86 Ill. Admin. Code

³ 18-TT-30, DOR002214

⁴ 18-TT-30, DOR002214

§ 100.3020(g). In addition, unlike the Auditor, the Rothmans could not set arbitrary but fixed deadlines on third parties to provide information requested by the Auditor.

(iii) The unavailability of flight-manifests aside, the Rothman's annual cost of travel by private aircraft to and from Florida would alone exceed the amount of the tax that he conclusively speculated the Rothmans "intentionally" undertook to avoid.

Nonetheless, the Auditor unreasonably conjectured in his email "My assumption is since they've recently stated they will agree to tax and interest, the requested documents prove they were Illinois residents."⁵

12. On November 16, 2017, the Auditor sent audit management an email regarding the Rothmans intention to pay tax and interest and request to abate late pay penalties, stating:

"I think we should abate nothing, as this won't end up in Court (they'll be compelled to actually provide information). We're letting them guide the audit process by providing only what they want."⁶

13. The Department's audit management replied the same day, inquiring:

"How do you know it won't end up in court? So they will look for a settlement and that is where the penalty will be abated, right?"⁷

14. The Department's Auditor replied the same day, stating:

"It won't end up in court because the evidence is against them. It is exactly why they have been so obstructive about supplying information.

...

⁵ 18-TT-30, DOR002214.

⁶ 18-TT-30, DOR001638

⁷ 18-TT-30, DOR001638.

I don't think we should 'take the money and run' or worry about them not agreeing since we are penalizing them. '14&'15 is only totals about \$70k/tax/Int/LP Pen. '13 is XXX and '16 is XXX alone in tax.

1. I think if we assess Negligence, they'll try to settle and ask to just pay LP, or
2. They agree, pay tax only, and go to BOA.

Either way, this locks them into residency in the middle years, making it that much harder to argue non-residence, especially in '13. I don't think this is a 'we're scaring them off situation'.”⁸

15. The “BOA” is the Board of Appeals of the Department, authorized to abate penalties for reasonable cause at its discretion – its decisions are by statute not subject to administrative review - *after* all avenues for appeal of a deficiency have been exhausted or forfeited. “LP” refers to late-pay penalty.
16. The Auditor’s email of November 16, 2017, urging audit management to deny the Rothman’s request to abate the proposed late payment penalty, further stated:

“I say let them take their chances with BOA. Since we have other cases pending/sandwiched on either side, the [penalty] abatement would lock us in. We lose our leverage. . . . I just don’t think we should give it up so easily, just to get a few bucks, when we have bigger fish awaiting.

I’m so glad we’re concentrating on Reasonable Cause. It makes everything so uncomplicated! ☺”⁹
17. The “bigger fish awaiting” remark discloses that the Auditor had already determined the amount of a resident liability assessment for the 2013 and 2016 tax years assuming, at some

⁸ 18-TT-30, DOR001637

⁹ 18-TT-30, DOR001637, emphasis and Smiley-emoji in original.

point, the Department would approve the Auditor's request to initiate an audit of 2013 and 2016.

18. Following the Auditor's assurance that the scheme "won't end up in court," on November 16, 2017, the Department approved the assessment of a negligence penalty for 2014 and 2015.
19. On November 20, 2017, the Auditor advised the Rothmans of the decision to deny them the abatement they requested of the late payment penalty for 2014 and 2015, and to approve the imposition of a negligence penalty. At that time, the Department did not directly or indirectly advise the Rothmans that it intended to open audits for 2013 and 2016 to "sandwich" 2014 and 2015.
20. On November 21, 2017, the Rothmans' counsel at the time asked the Auditor "What if we send you a check now for the tax reflected on the notice of proposed deficiency? . . . Our goal is to appeal the penalties to the Board of Appeals without incurring a 20% late pay penalty and without having to do an amended return."¹⁰
21. On November 21, 2017, the Auditor advised the Rothmans' counsel to "Send payment (tax only) back with the unsigned IL-870, write on the IL-870 that you are not signing it, but sending remit to agree to the tax only. Then I can close it out."¹¹ At that time, the Department did not directly or indirectly advise the Rothmans of its intent to open audits for 2013 and 2016.
22. On November 27, 2017, the Auditor sent the Rothmans' counsel an email with the amount of tax, interest, late pay penalty and negligence penalty along with a Closing Letter, IL-870 for the Rothmans' signature. Again, at that time the Department did not directly or indirectly advise the Rothmans that - *after* they paid the tax for 2014-2015 - the Department intended to open residency audits for 2013 and 2016 that "*sandwiched*" the 2014 and 2015 audit payment.

¹⁰ 18-TT-30, DOR002236

¹¹ 18-TT-30, DOR002236.

23. On November 30, 2017, the Rothmans sent a check to the Department's Auditor in payment of tax and interest for 2014 and 2015.

24. On December 1, 2017, counsel for the Rothmans at that time, advised the Auditor by email:

“To clarify, Mr. and Mrs. Rothman do not admit or concede that they are Illinois residents for tax purposes. Instead, they are paying the tax and interest in order to avoid the time and expense of litigation.”¹²

At that time, the Rothmans were not notified by the Department of its intent to audit 2013 and 2016.

25. On December 5, 2017, after receiving and processing the Rothman's payment of tax and interest for 2014 and 2015, and having the Rothman's representation that they would go to the Board of Appeals for abatement of penalties, the Department issued to the Jennifer its Notice of Audit Initiation for 2013, and to Jennifer and Michael it issued its Notice of Audit Initiation for 2016.

26. On January 18, 2018, the Department issued NODs to the Rothmans assessing negligence penalties for 2014 and 2015.

27. Instead of allowing the NODs to become final and petitioning the Board of Appeals for abatement, on March 14, 2018, the Rothmans' new counsel filed petition 18-TT-30 in the Tax Tribunal to protest the assessment of the penalty.

28. The Rothmans also filed a claim for refund of the tax they had agreed to pay to avoid litigation for 2014 and 2015. The Department denied the claim and the Rothmans filed Tax Tribunal petition 18-TT-132 to protest the denial.

29. Nearly four years later, in December of 2021, the Department concluded its 2013 and 2016 audits and issued the NODs at issue here.

¹² 18-TT-30, DOR002247

30. This time, unlike the NODs for the 2014-2015 tax years that the Department believed “won’t end up in court,” the Department assessed no negligence penalty for 2016.¹³

The Illinois Income Tax Act definition of “resident” and “nonresident”

31. The Illinois Income Tax Act defines the terms “nonresident” and “resident,” in part, as follows:

(14) Nonresident. The term “nonresident” means a person who is not a resident.

...

(20) Resident. The term “resident” means:

(A) an individual (i) who is in this State for other than temporary or transitory purposes during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year.

35 ILCS 5/1501(a)(14) and (a)(20).

32. The Department’s residency regulation in effect from April 19, 1990, through April 18, 2013, provided, in pertinent part, as follows:

- f) Presumption of residence. If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois. These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary.

¹³ The Uniform Penalty and Interest Act does not authorize such a penalty for 2013, since Jennifer, as a nonresident, had no Illinois source income and was not required to file an Illinois return.

86 Ill. Admin. Code 100.3020(f), as amended at 24 Ill. Reg. 10593, eff. Jul. 7, 2000. The text of 100.3020(f) was unchanged from that of prior regulation 100. 3250(f), adopted at 14 Ill. Reg. 6810, effective April 19, 1990. *See, Exhibit C.*

33. From April 19, 1990 through April 18, 2013, there had been no amendment to the IITA definitions for individuals of the terms “resident” and “nonresident.”
34. From April 19, 1990 through April 18, 2013, there had been no judicial precedent invalidating the IITA definitions of for individuals of the terms “Resident and nonresident.
35. From April 19, 1990 through April 18, 2013, there had been no judicial precedent invalidating the adoption, terms, or application of regulation 100.3250(f) or its recodified version in regulation 100.3020(f).
36. In July of 2012, the Department lost an individual residency appeal. In *Cain v. Hamer*, the same Auditor that audited Jennifer for 2014 and 2015 and who predetermined her 2013 resident status before initiating that audit, targeted as residents a retired married couple who “split their time roughly equally between” Florida and Illinois.¹⁴ *See, Exhibit D.* The Auditor used the “temporary or transitory purpose” analysis to challenge the nonresidency status of retired individuals who annually were consistently in Illinois for a period three months *shorter* than the 9-month residency presumption period. After years of litigation and expense to the Cains, the Appellate Court held that “this level of time-splitting does not render individuals’ presence in Illinois other than ‘temporary or transitory.’”¹⁵ In rebuffing the Department’s attack on the Cains’ non-resident status, the Appellate Court did not question the reasonableness of a regulatory presumption of residence based on 9 months of presence in Illinois that had been in effect since April 19, 1990.
37. Notwithstanding the undisturbed state of the law, regulations and precedent involving individual resident and nonresident status under the IITA since April 19, 1990, the

¹⁴ *Cain v. Hamer*, 2012 IL App (1st) 112833, ¶ 19.

¹⁵ *Id.*, ¶ 22.

Department amended its residency regulation to provide, among other changes, effective April 19, 2013, as follows:

f) Presumption of residence. The following create rebuttable presumptions of residence. These presumptions are not conclusive and may be overcome by clear and convincing evidence to the contrary. If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois. These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary.

1) An individual receiving a homestead exemption for Illinois property is presumed to be a resident of Illinois.

2) An individual who is an Illinois resident in one year is presumed to be a resident in the following year if he or she is present in Illinois more days than he or she is present in any other state.

86 Ill. Admin. Code 100.3020(f), as amended at 37 Ill. Reg. 5823, eff. April 19, 2013. *See, Exhibit E.*

38. The April 19, 2013 amendment by the Department to regulation § 100.3020(f):

(a) arbitrarily increased the burden to overcome the presumption from “satisfactory evidence to the contrary” to one requiring “clear and convincing evidence to the contrary;”

(b) arbitrarily replaced the 9-month residency presumption with a presumption that takes into account an individual’s residency status in the prior year and then presumes the individual “to be a resident in the following year if he or she is present in Illinois more days than he or she is present in any other state.” 86 Ill. Admin. Code § 100.3020(f)(2);

(c) invalidly, but tacitly and effectively, overruled the *Cain v. Hamer* decision; and,

(d) introduced year-to-year uncertainty because once the Department disagrees with an individual's nonresident status in a given year and adjusts his or her status to "resident" for that year, the following year automatically becomes subject to the sliding-scale presence presumption, so residency status for that year could change too by application of the presumption.

The 2013 Audit

39. In 2021, while the 2013 and 2016 audits were still open and pending, the Department asserted in Tax Tribunal in matters 18-TT-30 and 18-TT-132, that its notices for 2014 and 2015 are *prima facie* true and correct, including as to the Department's application of the presumption of residence in 86 Ill. Admin. Code § 100.3020(f).
40. A Tax Tribunal Order granting Petitioners' motion to compel discovery in 18-TT-30 and 18-TT-132 directed that:
3. The Department will produce any and all documents that provided the basis for its determination that Petitioners were Illinois residents for [the] 2013 tax year and that provided the basis for its application of the regulatory presumption that the Petitioners were Illinois residents for the 2014 tax year[.]
41. In response to paragraph 3 of the Tax Tribunal Order, the Department produced a four-page document prepared by the Department's Auditor for the 2014-2015 audit, captioned "Auditor's Comments."¹⁶ The Auditor's Comments produced as the basis of the 2013 residency determination was finalized by the Department on December 6, 2017, after the Rothmans had paid the tax for 2014 and 2015 but one day after the date of the notice of audit issued to Jennifer for 2013. However, the portion of the document captioned "Illinois Connections" and setting forth Illinois facts regarding Jennifer, and substantial other portions of the document, are unchanged from the document prepared by the Auditor October 5, 2017, captioned Request for EDA-122 approval.¹⁷

¹⁶ 18-TT-30, DOR000005.

¹⁷ 18-TT-30, DOR001662.

42. The 2014-2015 Auditor's Comments document acknowledge Jennifer's 2013 change to a Florida driver's license, voter registration, wills, and "all the 'usual' things," and notes that the Rothmans had "a homestead exemption on their Florida home and own a boat that is stored in Florida." The Auditor's Comments do not disclose that the same documents were also provided for 2017, indicating the Rothmans continuing Florida domicile. A two-paragraph section, captioned "Illinois Connections," makes mention of Jennifer as referenced in a *Chicago Lights* organization newsletter for April 2013, quoted as saying that "When the last of Jennifer Rothman's four children went off to college" Jennifer provided one-to-one tutoring to a student and taught "a healthy eating class as part of Chicago Lights Tutoring's enrichment programming." Beyond that hearsay reference, there is no other mention of Jennifer in the document asserted by the Department to be the basis for its 2013 residency determination.
43. On December 16th and 17th of 2021 the Department finished going through the motions of an impartial audit of the 2013 and 2016 tax years, and issued a NOD assessing Jennifer as an Illinois resident for 2013 and an NOD assessing Jennifer and Michael as residents for 2016. No negligence penalty was assessed for 2016.

COUNT I

The Department's Conduct Forfeited the Statutory Prima Facie Case

44. Petitioners incorporate and re-allege as through fully set forth herein paragraphs 1-43 hereof.
45. The findings of the Department presented in a NOD, pursuant to IITA section 904(a), "shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax and penalties due." 35 ILCS 5/904(a). This legally conferred status is often referred to as the "presumption of correctness."
46. It is "presumed, whenever an official has acted, that whatever is required to give validity to the official's act in fact exists." *Borg Warner v. Commissioner*, 660 F.2d 324, 330 (7th Cir. 1981). In certain cases, "the presumption of official regularity controls the question of the validity of the notice of deficiency." *United States v. Ahrens*, 530 F.2d 781, 785 (8th

Cir. 1976). The “presumption of regularity is subject to be rebutted” and “[i]t stands until dislodged.” *R.H. Stearns Co. v. United States*, 291 U.S. 54, 63 (1934).

47. There is no record that the Department asked the Rothmans for a waiver of the statute on assessment to keep the 2014-2015 audit open until it could initiate and conclude an audit of 2013.
48. The Department could not initiate an unbiased audit of 2013 to neutrally examine and determine that Jennifer was a nonresident in 2013. Concluding Jennifer was a nonresident for 2013 would have burst the presumption of residence under 86 Ill. Admin. Code § 100.3020(f) which the Department asserted was included as prima facie true and correct in its 2014-2015 NODs.
49. An audit liability determined before an audit begins is anathema to due process and, hence, is anathema to the presumption of administrative regularity. The outcome of the 2013 audit was tactically predetermined by the Department before it started, before a single Information Document Request (“IDR”) was issued for the 2013 year, and without regard to what information and documents would be produced by Jennifer in response to an IDR. “Not only is a biased decision maker constitutionally unacceptable, but ‘our system of law has always endeavored to prevent even the probability of unfairness. (Citation omitted)’ *Withrow v. Larkin*, 421 U.S. 35, 47, (1975).”
50. Tactics that take into account the avoidance of scrutiny by a court are anathema to the presumption of administrative regularity. It is documented that the Department took into account whether the scheme “won’t end up in court” when deciding to impose a negligence penalty for 2014 and 2015 - on taxpayers who had agreed to pay tax and interest to avoid litigation – with the design and intention to coerce the taxpayers to a predetermined outcome in audits not yet initiated for 2013 and 2016. It is also documented that, once the Department’s ‘negligence-penalty-sandwich’ scheme wound up in court, the Department behaved differently, and no negligence penalty was assessed for 2016.

WHEREFORE Petitioners pray that the Tax Tribunal find and determine that:

- A. The Department did not initiate and conduct the 2013 and 2016 audits of Jennifer and Michael Rothman within the norm of administrative regularity for tax audits under the IITA that is an intrinsic element of the statutory *prima facie* case purportedly asserted by the NODs issued for the 2013 and 2016 tax years.
- B. The Department's failure to adhere to the norm of administrative regularity for tax audits under the IITA stripped the NODs issued for the 2013 and 2016 tax years of the statutory presumption that each NOD asserts a *prima facie* true and correct resident liability.
- C. Petitioners are entitled to judgment in their favor for 2013 and 2016 unless the Department, at hearing, bears the burden of going forward with evidence sufficient to establish a *prima facie* case for each of the 2013 and 2016 tax years.

COUNT II

The Department's 2013 Amendment to 86 Ill. Admin. Code § 100.3020(f) is Invalid

- 51. Petitioners incorporate and re-allege as through fully set forth herein paragraphs 1-43 hereof.
- 52. Section 1-45(f) of the Tax Tribunal Act provides as follows:
 - (f) The Tax Tribunal shall decide questions regarding the constitutionality of statutes and rules adopted by the Department as applied to the taxpayer, but shall not have the power to declare a statute or rule unconstitutional or otherwise invalid on its face. A taxpayer challenging the constitutionality of a statute or rule on its face may present such challenge to the Tax Tribunal for the sole purpose of making a record for review by the Illinois Appellate Court. Failure to raise a constitutional issue regarding the application of a statute or regulations to the taxpayer shall not preclude the taxpayer or the Department from raising those issues at the appellate court level.
- 53. The Department's amendment to 86 Ill. Admin. Code § 100.3020(f) was a substantive amendment as the presumptions the amendment set forth are determinative of residency

when reflected in a properly issued NOD unless the NOD is timely protested and the statutory prima facie case is rebutted.

54. Substantive changes to law are applied prospectively only. *Perry v. Dep't Fin. & Pro. Regul.*, 2018 IL 1222349. That rule of prospectivity applies to regulations as well as statutes. *Hayashi v. Ill. Dept. Fin. & Pro, Regul.* 2014 IL 116023. For questions of retroactivity of enactments, Illinois has adopted the approach in *Landgraf v. USI Film Production*, 511 U.S. 244 (1994); *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38 (2001).
55. One hundred and eight (108) days elapsed in 2013, before the Department adopted a regulation that presumed an individual to be an Illinois resident based on whether (i) that person had been a resident of Illinois in 2012, and (ii) would spend the more days in Illinois than in one other state during 2013.
56. Persons relying on the regulation in effect since April of 1990 would not know until April 19 2013, that their status as an Illinois resident in 2012, which could not retroactively be changed, would now be used to presume they would be residents in 2013.
57. Persons relying on the regulation in effect since April of 1990, may have spent 108 days in Illinois before they could know, on April 19, 2013, that the 108 days already elapsed would count towards the presumption that they were an Illinois resident in 2013.
58. At the time of the amendment to regulation 100.3020(f) on April 19, 2013, the Tax Tribunal Act provided that “In the case of an issue of fact, the taxpayer shall have the burden of persuasion by a preponderance of the evidence.” 35 ILCS 1010/1-65(j), adopted by P.A. 97-1129, eff. 8-28-12.
59. In civil proceedings, Illinois case law has recognized and applied the “bursting bubble principle”, where a rebuttable presumption creates only a prima facie case of the particular issue involved, and the introduction of evidence contrary to the presumption bursts the bubble and nullifies the presumption. *See, e.g., Greenpoint Mortg. Funding, Inc. v. Hirt*. 2018 IL App (1st) 170921, ¶ 21.

60. The amendment to 100.3020(f) introducing a requirement of “clear and convincing evidence,” was contrary to the Tax Tribunal Act and contrary to Illinois common law.
61. The amendment to 100.3020(f) adopting a “clear and convincing” standard of evidence to rebut the new presumption was not necessary to conform the regulation to a statutory change to residency provisions of the IITA.
62. The amendment to 100.3020(f) adopting a “clear and convincing” standard of evidence to rebut the new presumption was not necessary to conform the regulation to a change in Illinois common law governing rebuttable presumptions in civil cases.
63. Determining the strength of a presumption and the amount of proof required to overcome it is a judicial function, as it depends on the circumstances of each case. *See, e.g., Wunderlich v. Burger*, 287 Ill. 440 (1919) and *Rizzo v. Rizzo*, 3 Ill. 2d 291 (1954), where the court determined as a matter of public policy that clear and convincing evidence was required to overcome a presumption of undue influence in a fiduciary relationship.
64. Prior to the Department’s amendment of regulation 100.3020(f), no case law had determined that clear and convincing evidence is required for a regulatory presumption of residence.
65. The amended regulation, if applied to the *Cain* facts, would change the position of the parties, giving the Department the initial advantage of a presumption of residency over the Cains. Had the Cains been residents of Illinois in 2012, “splitting time roughly equally” between Illinois and Florida, they would have been presumed to be Illinois residents in 2013 if, in 2013, they spent one day more in Illinois than in Florida.
66. The amendment to regulation 100.3020(f), effective April 19, 2013, was contrary to both the Appellate Court’s precedential and binding interpretation in *Cain* of the IITA and of the prior version of regulation 100.3020(f), in effect until April 18, 2013, which contained a residency presumption based on 9 months of Illinois presence in a tax year.
67. On April 18 1, 2013, the presumption in effect since April 19, 1990, set a 9-month period of Illinois presence applicable to all individuals. On April 19, 2013, that presumption was

amended and replaced with a sliding scale, different for every individual. The new presumption looks to time in Illinois relative to time in one other state. In violation of the Uniformity Clause of the Illinois Constitution, there is no real and substantial difference, reasonably related to a legitimate state interest, between individuals who, based on the same prior year residence in Illinois and the same number of days in Illinois in the subsequent year, are dissimilarly presumed to be residents of Illinois. Ill. Const. 1970, Art. IX, § 2.

68. One individual might spend 90 days in Illinois and be presumed a resident because the remaining 275 days were spent with 89 days in Florida and 186 days elsewhere. Another individual might spend 90 days in Illinois and be presumed a nonresident because the remaining 275 days were spent 91 days in Florida and 184 days elsewhere. An individual might spend 275 days outside the United States, and be presumed a resident of Illinois for spending 46 days in Illinois and 45 in Florida, while another spending 46 days in Florida would be presumed a nonresident of Illinois despite being out of the country for 275 days as well.
69. The Department's amended regulation 100.3020(f) is vague and overbroad because it fails to provide a definition of the term "days" in Illinois and "days" in another state. The regulation offers no guidance on whether the day one travels from Illinois to another state is to be counted as a day in Illinois or a day in the other state. If both the departure and destination state count the travel day as a day in their state, there will be more total days than there are days in a calendar year. The regulation is vague and fails to provide adequate notice to taxpayers to implement the presumption based on days in Illinois and days in one other state.
70. Unlike the regulation in Illinois until April 18, 2013 and unlike residency laws of other states, which look solely to the time spent in the taxing state to determine residency, the amended regulation looks to Illinois time *relative to* the time spent in one other state. An individual must restrict his or her travel from that one other domicile or residence state to any other state because any day spent outside the domicile or residence state shifts the Illinois regulation's sliding scale in favor of Illinois residency. For example, applying the

amended regulation to the facts in *Cain v. Hamer*, the Cains' even split of time between Illinois and *all* other jurisdictions - which allowed them to travel wherever they desired without affecting the 9-month Illinois-presence presumption and to remain as Florida residents - would shift in favor of Illinois for any day the Cains traveled to any other state than Illinois. The regulation's duration-based presumption has a chilling effect on an individual's constitutionally protected right to travel freely among the states. One can travel freely as long as one is presumed a resident of Illinois and is taxed on 100% of one's income from all sources, or, one can curtail the exercise of one's right to travel in order to achieve a ratio where number of days in the state of domicile is higher than those in Illinois, and be a nonresident taxed only on one's Illinois-source income.

71. The April 19, 2013 amendment by the Department was erroneous, arbitrary, capricious, unreasonable and impermissibly vague, violating the federal and Illinois constitutional guaranties of due process. U.S. Const., amend. I., Ill. Const. 1970, Art. II, § 1.
72. The April 19, 2013 amendment by the Department violates the provisions of the Fourteenth Amendment to the United States Constitution, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States[.]" As citizens of the United States, the regulation as applied to the Rothmans has a chilling effect on their right to freely travel among the states and therefore violates the Privileges and Immunities Clause of the Fourteenth Amendment and of Article IV of the United States Constitution, that "The Citizens of each State shall be entitled to the Privileges and Immunities in the several states." U.S. Const., Art. V, and Amend. XIV.
73. The April 19, 2013 amendment by the Department violated the constitutional doctrine of separation of powers. The Illinois Constitution provides that "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. 1970, Art. I, § 2.
74. As applied to the 2013 tax year, the April 19, 2013 amendment by the Department presuming a person to be a resident based on residency in 2012 violated the prohibition against an *ex post facto* law of the Illinois constitution. Ill. Const. 1970, Art. I, § 16.

75. Given that the April 19, 2013 amendment to regulation 100.3020(f) is invalid, the law applicable to the 2013 tax year is the IITA, specifically sections 1501(a)(14) and (a)(20), and the regulation 100.3020 in effect until April 18, 2013.
76. Given that the April 19, 2013 amendment to regulation 100.3020(f) is invalid, the law applicable to the 2016 tax year is the IITA, specifically the provisions of sections 1501(a)(14 and (a)(20) defining the terms “nonresident” and “resident.”

WHEREFORE, Petitioners pray that the Tax Tribunal find and determine that:

- A.** The Department’s application of the amended April 19, 2013 regulation 100.3020 to the 2013 tax year was invalid.
- B.** The Department’s application of the amended April 19, 2013 regulation 100.3020 to the 2016 tax year was invalid.
- C.** The Department’s application of IITA Sections 1501(a)(14) and (a)(20) to the 2013 and 2016 tax years was invalid.
- D.** Petitioners have challenged the constitutionality of regulation 100.3020, as amended effective April 19, 2013, on its face, and may present such a challenge to the Tax Tribunal for the sole purpose of making a record for review by the Illinois Appellate Court.

COUNT III

The Rothmans Are Nonresidents of Illinois

77. Petitioners’ hereby incorporate and re-allege as through fully set forth herein paragraphs 51-76 hereof.
78. Michael has traveled to Florida every year since he was 16. He developed a love of boating in Florida, not Lake Michigan, which would be manifest both as a personal hobby and a business in Florida, throughout all the relevant tax years.
79. Michael’s mother has been domiciled and resided in Florida since the 1990s.

80. Michael and Jennifer Rothman were married in 1981.
81. Starting with a net worth of zero, Michael and Jennifer since proceeded to found, own, co-own, and sell a series of businesses based in Illinois, Indiana, and Florida, providing employment to support thousands of households in Illinois and across the country.
82. During the course of their marriage, they raised four children. Their first child was born in 1985. Their fourth child graduated from high school in 2010.
83. From 1985 through 2010, the Rothman family lived in and around the City of Chicago, initially in Highland Park, and in the City of Chicago since on or around 2004.
84. In 2003, they purchased a condominium in Chicago as their family residence, which they sold in 2018 and now occupy as tenants while in Illinois on a temporary and transitory basis. No property tax homestead exemption was claimed on the condominium in any relevant period, including in 2013.
85. In 2003, Jennifer required surgery for a condition misdiagnosed by medical experts in Chicago. Jennifer's research on the leading specialists led her to travel to Vail, Colorado. Jennifer and Michael traveled back and forth to Colorado for surgery, and rehabilitative therapy, for a three-year period, and Jennifer periodically, and recently, returned to Vail for follow-up consultations.
86. By 2013, the Rothmans four children had become adults, and were either attending college, graduate school, or pursuing their careers.
87. Long before 2013, the Rothmans had organized a limited liability company to hold their interests in their various businesses. ("Family HoldCo"), including companies in industrial cleaning and outsourcing of cleaning services, and including their interest in a principal business. Jennifer was the sole member of Family HoldCo in 2013.
88. Family HoldCo's principal business began with six employees in Illinois ("Principal Business"). Michael founded and led the Principal Business since 2003. The Principal Business, which offered to take from store managers all the property management things they do not want to do, has evolved to cloud-based property management platform for

businesses. The Principal Business now has over 800 employees, 186,000 service locations, and it has leased hundreds of thousands of square feet in the Chicago Loop district, and generated millions of dollars in Illinois income tax withholding revenues each year. Yet, the business has approximately only 3% of its customer locations within Illinois.

89. From inception through 2013, Michael's role in the Principal Business required him to travel outside Illinois on a weekly basis to sign-up floor-care customers and to maintain relationships with existing clients. He traveled regularly to multiple states to build a network of floor-care providers to service clients' locations nation-wide, and eventually of providers of other related services such as snow removal, landscaping, and so on. At all times relevant hereto, Michael's Principal Business-related travel required him to be outside Illinois in excess of 180 days per year. During the tax years at issue, Michael's time outside Illinois approximated 220 days per year
90. Since September 11, 2001, because the main office of the Principal Business was at the John Hancock Tower in Chicago, clients had insisted that the business be able to continue operations without interruption in the event of a disaster befalling the John Hancock Tower. As a result, Michael set up the business to be able have its employees, and principally himself, work remotely from anywhere with a laptop. By 2018, the Principal Business had been listed in the Forbes Cloud 100 for three consecutive years, as one of the top 100 private cloud companies in the world.
91. Michael's Principal Business did not need him to be in Chicago. Despite his CEO title, the business needed him to be constantly outside Illinois - visiting clients, potential clients, vetting and signing up service-partner contractors throughout the country - and especially in the Southeast, which held the largest concentration of the businesses' client locations.
92. In 2004, a year after founding the Principal Business, and for the entire time that Michael led the Principal Business, Michael became a 50 % co-investor and co-founder of a janitorial supply company in West Palm Beach, Florida, in which he served as co-managing partner from 2004 to 2019.

93. Since at least 2012, the Rothmans, through two special purpose entities held by Family HoldCo, have, respectively, owned two jet aircraft and employed pilots. The Rothmans contracted with a flight management company for the charter of the aircraft when not in their use. This was done to accommodate Michael's travel schedule demands, to allow the Rothmans to spend time in Florida, and for operation of the aircraft when not in use by Michael and Jennifer for business and personal travel. During the relevant years the aircraft have been hangered in two states, neither of which is Illinois, and paid applicable taxes there.
94. Since 2008, Michael and Jennifer have owned sea-faring boats in Florida.
95. Since 2010, the Rothmans, through Family HoldCo, have owned a boat-charter company in Miami, Florida, that has at all relevant times owned and chartered between two and four yachts, ranging in size from 54 feet to 81 feet. The inventory of yachts includes one purchased in 2013.
96. The boat-charter company has annually generated revenues approximately five times greater than the Illinois tax liability assessed for 2014 and 2015. Since 2010, and at all relevant times, the company has incurred expenses operation and storage in Florida, and, through one of the special purpose entities, has employed two to three individuals in Florida.
97. By 2013, Michael's efforts to expand the client and provider base, using innovative cloud technology, including launching an app in 2013, had differentiated the Principal Business and steeply accelerated its growth.
98. Despite their frequent annual travel to Florida throughout their marriage, before 2010, the Rothmans had no permanent arrangement for accommodations in Florida.
99. Since at least 2010, and at all times relevant hereto, it was Jennifer's and Michael's intent to move to Florida, acquire a domicile in and become permanent residents of Florida, as soon as family and business obligations and financial means would allow.

100. In 2010, Jennifer rented a residential condominium unit in Miami, Florida, facilitating more frequent travel and longer stays in Florida. Lease extensions were agreed to twice thereafter through February 2014.
101. At all relevant times, Michael has owned vehicles titled in the State of Florida and registered to Jennifer's rented condominium address in 2010, and to their principal residence purchased in 2013 thereafter.
102. As the Rothman children went off to college, Jennifer reduced her commitments to volunteer organizations, such as *Chicago Lights*, on whose board she served through the end of 2012.
103. In February of 2013, now an empty nester, Jennifer signed a second lease extension for the Florida condominium, extending its term through February of 2014.
104. On or about June of 2013, a venture capital group presented an unsolicited purchase offer for a significant portion of Family HoldCo's interest in its Principal Business. At that time, the venture capital group already held a minority interest in the Principal Business. Family HoldCo's 2013 sale of a significant portion of its interests in the Principal Business allowed Jennifer and Michael to immediately implement the remaining steps to achieve their long-held intent to relocate to Florida and become Florida residents.
105. In October 2013, Jennifer and Michael purchased a larger condominium in the same building in Miami, Florida, in which they had rented a unit since 2010.
106. In October 2013, Michael and Jennifer joined the Ocean-Reef Club, a private club community offering lodging, golfing, dining, and a marina, in Key Largo, Florida.
107. In 2013, and at all relevant times before and after 2013, Jennifer was not an employee of any business, and earned no wages or self-employment income. Jennifer did not perform services for Family HoldCo in connection with her ownership interest in the entity, nor as an employee, nor as an independent contractor.
108. In December 2013, Jennifer and Michael then surrendered their Illinois driver's licenses and obtained Florida driver's licenses. The licenses were renewed in 2017.

109. In December 2013, Jennifer and Michael registered to vote in Florida. The registrations were renewed in 2017.
110. During 2013, Jennifer spent approximately 129 days outside Illinois. Her days in Illinois were well below the 9 months in-state presence that would trigger a presumption of residence under regulation 100.3020 in effect from April 19, 1990, through April 18, 2013.
111. During 2013, Michael spent approximately 216 days outside Illinois. His days in Illinois were well below the 9 months in-state presence that would have triggered a presumption of residence under regulation 100.3020 in effect from April 19, 1990, through April 18, 2013.
112. In 2013, Michael and Jennifer also purchased a home in Colorado, the value of which exceeds that of their Florida properties and, during the relevant time that they had Illinois property, exceeded the value of the Florida and Illinois property holdings combined.
113. Since 2013, Jennifer and Michael's ties to Florida have only increased, evidencing that their intent to make Florida their home and domicile was a personal, genuine life choice, made without consideration of the cost of Illinois taxation.
114. Since 2013, Michael and Jennifer have added to their real estate and personal property holdings in Florida and in Colorado, but not in Illinois. Since 2013, the value of their holdings in Florida has vastly exceeded those they have in Illinois. Since 2013, the value of their holdings in Colorado have vastly exceed those they have in Illinois.
115. Since 2010, it has been Michael's and Jennifer's intent and plan to diminish their ownership, and as necessary their rights to control the Principal Business.
116. The Rothmans' interest in the Principal Business, through Family HoldCo, diminished from 60% in 2010, to 10% by 2017.
117. Family HoldCo's interest in the Principal Business became a minority interest in 2013.

118. As planned by Michael and Jennifer, in October 2016, Michael caused the Principal Business to retain the services of a professional executive search firm to find a candidate to replace him as Chief Executive Officer of the business.
119. Michael stepped down as CEO in May of 2017, having in all relevant years maintained the grueling travel schedule that built the client-base for the Principal Business, his co-managing partner role in the Florida supply company business, his yacht-charter business in Florida, and his and Jennifer's domicile and residence in Florida.
120. Since stepping down as CEO in 2017, Michael has continued to expand his business and personal pursuits in Florida.
121. In 2017, Michael founded and became CEO of a business providing asset management for organizations seeking to invest in the real estate rental market. The company has had offices in Miami and Tampa, Florida since 2018, and currently occupies 2,700 sq. ft. in Miami and 20,000 sq. ft. in Tampa. It recently signed an office-lease in Jacksonville, Florida. The company currently employs approximately 60 people in Florida, and estimates it will have 200 employees by year-end. Currently, only five employees are located in Illinois. The company has purchased approximately 850 properties in Florida, Georgia and Pennsylvania, and none in Illinois.
122. In 2017, Michael also became a founder and passive investor in another business deploying scalable business solutions through technology, with offices in the U.S. and in Asia.
123. Michael continued his role a co-partner in the West Palm Beach supply company until winding up the company in 2019.
124. Michael and Jennifer have established additional medical relationships in Florida, to complement those with long-term trusted practitioners they already had in Illinois and in Vail, Colorado. Michael and Jennifer are fortunate to be able to select and visit physicians based on their reputation in their particular specialty, without regard to their location, as frequently as is recommended by the treating physician.

125. Since 2017, the Rothmans have been under audit by the Department and remain so to this day, all while in litigation for a tactically imposed negligence penalty for a proposed tax liability that they paid, in order to avoid litigation, without conceding residency.
126. The Department has recently concluded audits of the 2017 and 2018 tax years, which it has indicated to the Rothmans it intends to assess.
127. One thing that has not changed since 2013, is that Michael and Jennifer have continued to fly into Illinois, regularly, to enjoy their adult children and grandchildren's lives, and always with the intention of returning to their home, businesses, hobbies and life in Florida, which they have done every time.

WHEREFORE, Petitioners pray that the Tax Tribunal find and determine that:

- A. The Department's NOD against Jennifer Rothman for 2013 is not supported by the law and the facts and Jennifer Rothman was not required to file a 2013 resident return.
- B. The Department's NOD against Michael and Jennifer Rothman for 2016 is not supported by the law and the facts and Michael and Jennifer Rothman properly filed as nonresidents for 2016.

COUNT IV

IN THE ALTERNATIVE

128. Petitioners' hereby incorporate and, in the alternative, re-allege as through fully set forth herein paragraphs 77 through 127 hereof.
129. Section 3-8 of the UPIA, in pertinent part, provides as follows:

Sec. 3-8. No penalties if reasonable cause exists. The penalties imposed under the provisions of Section 3-3, 3-4, 3-5, and 3-7.5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in

accordance with the rules and regulations promulgated by the Department of Revenue. . . .

35 ILCS 735/3-9.

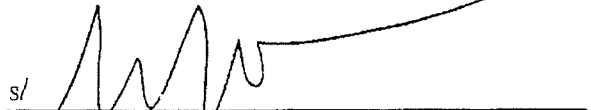
130. The Department's regulations promulgated to implement Section 3-8 of the UPIA are found at 86 Ill. Admin. Code § 700.400.
131. Petitioners exercised ordinary business care and prudence in making a good faith effort to determine their obligations under the IITA for 2013 through 2016.
132. In determining her obligations under the IITA, Jennifer encountered a lack of clarity of the law in 2013 resulting from the Department's April 19, 2013, amendment, and Michael and Jennifer encountered a lack of clarity in the terms of the amendment itself for the 2013 and 2016 years, and a lack of clarity in the applicability of precedent tacitly contradicted by the Department's regulation, as amended August 19, 2013.

WHEREFORE, in the alternative, the Rothmans pray that the Tax Tribunal find and determine that:

- A. Reasonable cause exists to abate the penalties assessed for 2013; and,
- B. Reasonable cause exists to abate the penalties assessed for 2016.

Dated: February 11, 2022

Respectfully submitted,

s/ 

Michael J. Wynne (# 6188230)
mwynne@jonesday.com

JONES DAY

Michael J. Wynne

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Suite 3500

Chicago, IL 60601.1692

Telephone: +1.312.782.3939

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EXHIBIT A

Notice of Deficiency



_____ #BWNKMGV
#CNXX X135 XX31 X881#
JENNIFER ROTHMAN
ATTN: JONES DAY - MICHAEL J WYNNE
_____ 77 W WACKER DR
CHICAGO IL

December 16, 2021



Letter ID: CNXXX135XX31X881

Taxpayer ID: XXX-XX-8655

Audit ID: A1296087040

Reporting period: December 2013

Total Deficiency:

Balance due:



We have audited your Form IL-1040, Individual Income Tax Return for the reporting period listed above. Please see the attached Auditor's Report and Explanation of Audit Adjustment, for a complete computation of your deficiency and explanation of audit adjustments. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. You can now submit your payment through MyTax Illinois, our online account management program. Payments submitted through MyTax Illinois are secure and may help avoid delays associated with payments submitted by mail. You can also use MyTax Illinois to check your account balances, view your existing account, or create a new account at mytax.illinois.gov. If you do not pay electronically, make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed, but the total penalties and interest is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases**, file a protest with us, the Illinois Department of Revenue, within **60 days** of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due which, may include levy of your wages and bank accounts, filing of a tax lien, or other action.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following page of this notice for additional information and instructions. If you have questions, call us at the telephone number shown below.

Sincerely,

David Harris
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 524-2230

EXHIBIT B

Notice of Deficiency



December 17, 2021



Letter ID: CNXXXX5743825760

Taxpayer ID: XXX-XX-4570

Audit ID: A2052727808

Reporting period: December 2016

Total Deficiency:

Balance due:



#BWNKMGV
#CNXX XX57 4382 5760#
MICHAEL AND JENNIFER ROTHMAN
ATTN: JONES DAY - MICHAEL J WYNNE

77 W WACKER DR
CHICAGO IL 60601-1604

We have audited your Form IL-1040, Individual Income Tax Return for the reporting period listed above. Please see the attached Auditor's Report and Explanation of Audit Adjustment, for a complete computation of your deficiency and explanation of audit adjustments. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. You can now submit your payment through MyTax Illinois, our online account management program. Payments submitted through MyTax Illinois are secure and may help avoid delays associated with payments submitted by mail. You can also use MyTax Illinois to check your account balances, view your existing account, or create a new account at mytax.illinois.gov. If you do not pay electronically, make your check payable to the "Illinois Department of Revenue", write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed, but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases, file a protest with us, the Illinois Department of Revenue, within 60 days of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within 60 days, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due which, may include levy of your wages and bank accounts, filing of a tax lien, or other action.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following page of this notice for additional information and instructions. If you have questions, call us at the telephone number shown below.

Sincerely,

David Harris
Director

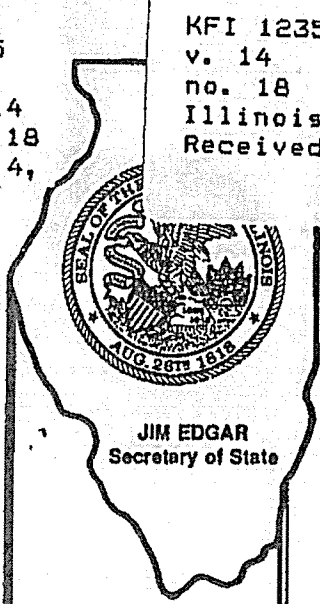
ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 524-2230

EXHIBIT C

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no. 18
Illinois register
Received on: 05-09-90



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1990

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Secretary of State
Administrative Code Div.
201 West Monroe
Springfield, IL 62758

(217) 782-9786

ILLINOIS REGISTER

Rules of Governmental Agencies

TABLE OF CONTENTS

PROPOSED RULES

PAGE

ALCOHOLISM AND SUBSTANCE ABUSE, DEPARTMENT OF
Licensure of Alcoholism & Substance Abuse Treatment, Intervention &
Research Programs; 77 Ill. Adm. Code 20586457

ENVIRONMENTAL PROTECTION AGENCY
Toxic Pollution Prevention Innovation Plans; 35 Ill. Adm. Code 181 6520

POLLUTION CONTROL BOARD
Identification & Listing of Hazardous Waste; 35 Ill. Adm. Code 721 6528
Interim Status Standards for Owners & Operators of Hazardous Waste
Treatment, Storage & Disposal Facilities; 35 Ill. Adm. Code 725 6574
Land Disposal Restrictions; 35 Ill. Adm. Code 728 6597
RCRA Permit Program; 35 Ill. Adm. Code 703 6619
Standards for Owners & Operators of Hazardous Waste Treatment, Storage
& Disposal Facilities; 35 Ill. Adm. Code 724 6638
Standards for the Management of Specific Hazardous Waste & Specific
Types of Hazardous Waste Management Facilities; 35 Ill. Adm. Code 726 ...6660

PUBLIC AID, DEPARTMENT OF
Reimbursement for Nursing Costs for Geriatric Facilities; 89 Ill. Adm.
Code 147 6664

REHABILITATION SERVICES, DEPARTMENT OF
Centers for Independent Living; 89 Ill. Adm. Code 885 6666
Vending Facility Program for the Blind; 89 Ill. Adm. Code 650 6683
Vending Stand Program for the Blind; 89 Ill. Adm. Code 650, Repeal of 6725

ADOPTED RULES

CORRECTIONS, DEPARTMENT OF
Personal Property; 20 Ill. Adm. Code 535 6765

POLLUTION CONTROL BOARD
Effluent Standards; 35 Ill. Adm. Code 304 6777

REHABILITATION SERVICES, DEPARTMENT OF
Medical, Psychological, & Related Services; 89 Ill. Adm. Code 587 6785

RETIREMENT SYSTEM, STATE UNIVERSITIES
Universities Retirement; 80 Ill. Adm. Code 1600 6789

REVENUE, DEPARTMENT OF
Cigarette Tax Act; 86 Ill. Adm. Code 440 6794
Cigarette Use Tax Act; 86 Ill. Adm. Code 450 6804
Income Tax; 86 Ill. Adm. Code 100 6810

(continued on next page)

memberships and participation, telephone and/or other utility usage over a duration of time. In appropriate instances, the Department may request any relevant evidence which may assist it in determining the taxpayer's place of residence."

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency amendment currently in effect? No

14) Are there any amendments running on this Party? Yes

Section Numbers	Proposed Action	Illinois Register Citation
100.2900	Amendment	7/7/89, 13 Ill. Reg. 10772
100.2901	New Section	7/7/89, 13 Ill. Reg. 10772
100.2902	New Section	7/7/89, 13 Ill. Reg. 10772
100.2903	New Section	7/7/89, 13 Ill. Reg. 10772
100.2904	New Section	7/7/89, 13 Ill. Reg. 10772
100.3060	Amendment	12/15/89, 13 Ill. Reg. 19347
100.9070	Amendment	12/15/89, 13 Ill. Reg. 19347
100.9110	Amendment	12/15/89, 13 Ill. Reg. 19347
100.9130	Amendment	12/15/89, 13 Ill. Reg. 19347
100.9140	Amendment	12/15/89, 13 Ill. Reg. 19347

15) Summary and Purpose of Rule(s): Section 100.3250 is clarified and superfluous language is removed and presumption of nonresidence is added.

15) Information and questions regarding this adopted amendment shall be directed to:

Lawrence M. Reisch, Jr.
Staff Attorney
Income Tax Legal Division
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-7055

The full text of the adopted amendment begins on the next page:

100.2400
100.2450

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE
PART 100
INCOME TAX

SUBPART A: TAX IMPOSED

Personal Property Tax Replacement Income Tax (hereinafter PPRIT) for taxable years beginning prior to July 1, 1979, and ending after June 30, 1979 - Specific Accounting - In General (ITTA Section 201) (Repealed)
Personal Property Tax Replacement Income Tax (PPRIT) for taxable years beginning prior to July 1, 1979, and ending after June 30, 1979 - Specific Accounting - Carryover Items (ITTA Section 201) (Repealed)
Personal Property Tax Replacement Income Tax (PPRIT) for taxable years beginning prior to July 1, 1979, and ending after June 30, 1979 - Specific Accounting - Carryback Items (ITTA Section 201) (Repealed)
Personal Property Tax Replacement Income Tax (PPRIT) for taxable years beginning prior to July 1, 1979, and ending after June 30, 1979 - Specific Accounting - Partnership Income (ITTA Section 201) (Repealed)
Personal Property Tax Replacement Income Tax (PPRIT) for taxable years beginning prior to July 1, 1979, and ending after June 30, 1979 - Specific Accounting - Long Term Contracts Reported on the Completed Contract Method (ITTA Section 201) (Repealed)
Personal Property Tax Replacement Income Tax (PPRIT) for taxable years beginning prior to January 1, 1981, and ending after December 31, 1980 - Specific Accounting - In General (ITTA Section 201) (Repealed)
Personal Property Tax Replacement Income Tax (PPRIT) for taxable years beginning prior to January 1, 1981, and ending after December 31, 1980 - Specific Accounting - Carryover Items (ITTA Section 201) (Repealed)
Personal Property Tax Replacement Income Tax (PPRIT) for taxable years beginning prior to January 1, 1981, and ending after December 31, 1980 - Specific Accounting - Carryback Items (ITTA Section 201) (Repealed)
Personal Property Tax Replacement Income Tax (PPRIT) for taxable years beginning prior to January 1, 1981, and ending after December 31, 1980 - Specific Accounting - Partnership Income (ITTA Section 201) (Repealed)
Personal Property Tax Replacement Income Tax (PPRIT) for taxable years beginning prior to January 1, 1981, and ending after December 31, 1980 - Specific Accounting - Long Term Contracts Reported on the Completed Contract Method (ITTA Section 201) (Repealed)

100.2500	Scope of 86 Ill. Adm. Code 100.2000 through 100.2450 (Repealed)
100.2550	Net Income (ITRA Section 202)
100.2560	Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (ITRA 207)
100.2551	Computation of the Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (ITRA 207)
100.2562	Determination of the Amount of Illinois Net Loss for Losses Occurring On or After December 31, 1986
100.2563	Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring On or After December 31, 1986
100.2564	Illinois Net Losses and Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Separate Unitary Ver- sus Combined Unitary Returns
100.2565	Illinois Net Losses and Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Changes in Membership
100.2600	Special Transitional Rules (ITRA Section 202) (Repealed)
100.2650	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (ITRA Section 202) - Scope
100.2675	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (ITRA Section 202) - Definitions
100.2700	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (ITRA Section 202) - Current Net Operating Losses: Offsets Between Members
100.2750	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (ITRA Section 202) - Carrybacks and Carryforwards
100.2800	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (ITRA Section 202) - Effect of Combined Net Operating Loss in Computing Illinois Base Income
100.2950	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Filing Unitary Business Group. (ITRA Section 202) - Headline for Filing Claims Based on Net Operating Losses Carried Back from a Combined Apportionment Year
100.2900	Investment Tax Credits
100.2950	Capital Gain Income of Estates and Trusts Paid to or Perma- nently Set Aside for Charity

SUBPART B: ALLOCATION AND APPOINTMENT OF BASE INCOME
Terms Used in Article 3 (ITRA Section 301)

100.3050	Business and Nonbusiness Income (ITRA Section 301)
100.3100	Compensation (ITRA Section 302)
100.3150	State (ITRA Section 302)
100.3200	Taxability in Other State (ITRA Section 303)
100.3250	Resident (ITRA Section 301)
100.3300	Commercial Donor (ITRA Section 303)
100.3350	Allocation and Apportionment of Base Income (ITRA Section 304)
100.3400	Allocation of Compensation Paid to Nonresidents (ITRA Section 302)
100.3450	Allocation of Certain Items of Nonbusiness Income by Persons Other than Residents (ITRA Section 303)
100.3500	Business Income of Persons Other than Residents (ITRA Section 304) - In General
100.3510	Business Income of Persons Other than Residents (ITRA Section 304) - Apportionment
100.3520	Business Income of Persons Other than Residents (ITRA Section 304) - Allocation
100.3530	Business Income of Persons Other than Residents (ITRA Section 304)
100.3550	Property Factor (ITRA Section 304)
100.3600	Payroll Factor (ITRA Section 304)
100.3650	Sales Factor (ITRA Section 304)
100.3700	Special Rules (ITRA Section 304)

SUBPART C: RETURNS, RETURNS AND NOTICES
Time for Filing Returns: (ITRA Section 505)
Time for Filing Returns: Corporations (ITRA Section 505) (Repealed)
Time for Filing Returns: Cooperatives (ITRA Section 505)
Time for Filing Returns: Partnerships (ITRA Section 505) (Repealed)
Time for Filing Returns: Estates and Trusts (ITRA Section 505) (Repealed)
Place for Filing Returns: All Taxpayers (ITRA Section 505)
Extensions of Time for Filing Returns: All Taxpayers (ITRA Section 505)
Short Year Returns of Newly Acquired Subsidiaries (ITRA Section 505) (Repealed)
Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (ITRA Section 506)
Composite Returns: Eligibility
Composite Returns: Responsibility of Authorized Agent
Composite Returns: Individual Liability
Composite Returns: Required Forms and Computation of Income
Composite Returns: Estimated Payments

100.5710 Composite Return: Tax, Penalties and Interest
 100.5712 Composite Returns: Credit for Resident Individuals
 100.5714 Composite Returns: Definition of a "Doyd's Plan of Operation"
 100.5000 Election to file a Combined Return
 109.6010 Procedure for Making the Election
 100.6020 Designated Agent for the Members
 100.6030 Combined Estimated Tax Payments
 100.6050 Claims for Credit of Overpayments
 100.6060 Liability for Combined Tax, Penalty and Interest
 100.6070 Combined Amended Returns
 100.6070 Computation of Combined Income and Tax
 100.6090 Definitions and Miscellaneous Provisions Relating to Combined Returns

SUBPART D: INCOME TAX WITHHOLDING

Section
 100.7000 Requirement of Withholding (ITRA Section 701)
 100.7010 Compensation Paid in this State (ITRA Section 701)
 100.7020 Transacting Business Within this State (ITRA Section 701)
 100.7030 Payments to Residents (ITRA Section 701)
 100.7040 Employer Registration (ITRA Section 701)
 100.7050 Computation of Amount Withheld (ITRA Section 701)
 100.7060 Additional Withholding (ITRA Section 701)
 100.7070 Voluntary Withholding (ITRA Section 701)
 100.7080 Correction of Underwithholding or Overwithholding (ITRA Section 701)
 100.7090 Reciprocal Agreement (ITRA Section 701)
 100.7100 Gross References
 100.7150 Withholding Exemption Certificate (ITRA Section 702)
 100.7200 Withholding Exemption Certificate (ITRA Section 702)
 100.7250 Exempt Withholding Under Reciprocal Agreements (ITRA Section 702)
 100.7300 Reports for Employee (ITRA Section 703)
 100.7350 Returns of Income Withheld from Wages (ITRA Section 704)
 100.7400 Quarterly Returns Filed on Annual Basis (ITRA Section 704)
 100.7450 Time for Filing Returns (ITRA Section 704)
 100.7500 Payment of Tax Deducted and Withheld (ITRA Section 704)
 100.7550 Correction of Underwithholding or Overwithholding (ITRA Section 704)
 100.7550 Requirement of Withholding-Personal Service Contracts (ITRA Section 708)
 100.7570 Contracts Indeterminate as to Amount (ITRA Section 708)
 100.7580 Series of Identical Contracts (ITRA Section 708)
 100.7590 Personal Services Contract (ITRA Section 708)
 100.7600 Presence Necessitated (ITRA Section 708)
 100.7610 Certification of Residence (ITRA Section 708)
 100.7620 Identities Specified in the Contract (ITRA Section 708)
 Net Amount (ITRA Section 708)

100.7530 Coordination with ITRA Section 791 (ITRA Section 798)
 100.7540 Requirement of Withholding-Prizes and Awards (ITRA Section 703)
 100.7650 Promoter (ITRA Section 703)
 100.7700 Non-Cash Prizes (ITRA Section 709)
 100.7750 Certification of Residence (ITRA Section 799)
 100.7800 Relative Performance (ITRA Section 709)

Section
100.8300

Section
 100.8300 Penalty for Underpayments of Estimated Tax-Exception for Payments Based on Prior Year's Liability-Rule for a Taxable Year Following the Taxable Year in which the Personal Property Tax Replacement Income Tax (PPRIT) became Effective-Corporate Taxpayers (ITRA Section 802) (Repealed)
 Penalty for Underpayment of Estimated Tax-Exception for Payments Based on the Prior Year's Facts-Change in the Personal Property Tax Replacement Income Tax (PPRIT) Rate for Corporations on January 1, 1981 (ITRA Section 802) (Repealed)

SUBPART E: STATEMENT OF PROCEDURAL RULES

Section
 100.9000 Introduction
 100.9005 Letter Ruling Procedures
 100.9010 General Income Tax Procedures (ITRA Section 901)
 100.9020 Taxpayer Representation and Practice Requirements
 100.9030 Collection Authority (ITRA Section 901)
 100.9040 Notice and Demand (ITRA Section 902)
 100.9050 Assessment (ITRA Section 903)
 100.9060 Deficiencies and Overpayments (ITRA Section 904)
 100.9061 Application of Tax Payments Within Unitary Business Groups (ITRA Section 903)
 100.9070 Limitations on Notices of Deficiency (ITRA Section 905)
 100.9080 Further Notices of Deficiency Restricted (ITRA Section 906)
 100.9090 Failure of Restrictions on Assessments (ITRA Section 907)
 100.9100 Procedure on Protest (ITRA Section 908)
 100.9110 Credits and Refunds (ITRA Section 909)
 100.9120 Procedure on Denial of Claim for Refund (ITRA Section 910) (Repealed)
 100.9130 Limitations on Claims for Refund (ITRA Section 911)
 100.9140 Recovery of Stray Losses (ITRA Section 912)
 100.9150 Access to Books and Records (ITRA Section 913)
 100.9200 Conduct of Investigations and Hearings (ITRA Section 914)

SUBPART G: JUDICIAL REVIEW

Section
 100.9805 Administrative Review Law (ITRA Section 1201)
 SUBPART I: DEFINITIONS AND RULES OF INTERPRETATION

Section 190.9990 Unitary Business Group Defined (ITRA Section 1501.)

APPENDIX A: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

249.2 A Example of Unitary Business Apportionment
249.4 B Example of Unitary Business Apportionment for Groups which
Include Members Using Three-Factor and Single-Factor
Formulas

ADMINISTRATIVE: Implementing the Illinois Income Tax Act and authorized by Section 1401 of that Act (Ill. Rev. Stat. 1987, ch. 120, pars. 1-101 et seq. and 14-1401).

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49 D. 84, effective November 29, 1973; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4642, effective April 14, 1981; amended at 5 Ill. Reg. 5533, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6443, effective June 15, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1985; amended at 10 Ill. Reg. 21341, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective November 24, 1985; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12417, effective July 8, 1987; amended at 11 Ill. Reg. 17193, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1983; amended at 12 Ill. Reg. 11766, effective July 1, 1983; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1987; amended at 13 Ill. Reg. 10957, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990.

SUBPART 8: ALLOCATION AND APPORTIONMENT OF GAST INCOME

Section 100.3250 Resident (ITRA Section 301)

a) General definition:

- 1) The term "resident" is defined in ITRA Section 1501(a)(20) to mean:
1) an individual who is in Illinois for other than a temporary or

b) Individuals:

- 1) a trust created by the will of a decedent who at his death was domiciled in Illinois; and
- 2) the estate of a decedent who at his death was domiciled in Illinois;
- 3) a trust created by the will of a decedent who at his death was domiciled in Illinois; and
- 4) an irrevocable trust, the grantor of which was domiciled in Illinois at the time such trust became irrevocable. For the purpose of this subparagraph, a trust is considered irrevocable to the extent that the grantor is not treated as the owner thereof under 26 U.S.C. 671 through 678.

An individual may be a resident of Illinois although not domiciled in Illinois and conversely may be domiciled in Illinois without being a resident. The purpose of the general definition is to include in the category of individuals who are taxable on their entire net income, regardless of whether derived from sources within or without Illinois, all individuals who are physically present in Illinois enjoying the benefit of its government, except those individuals who are here temporarily, and to exclude from this category, all individuals, who, although domiciled in Illinois, are outside Illinois for other than temporary and transitory purposes, and, hence, do not obtain the benefit of Illinois government. If an individual acquires the status of a resident by virtue of being physically present in Illinois for other than temporary or transitory purposes, he remains a resident even though temporarily absent from Illinois. If, however, he leaves Illinois for other than temporary or transitory purposes, he thereupon ceases to be a resident. If an individual is domiciled in Illinois, he remains a resident unless he is outside Illinois for other than temporary or transitory purposes.

c) Temporary or transitory purposes:

Whether or not the purpose for which an individual is in Illinois will be considered temporary or transitory in character will depend upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through Illinois on his way to another state, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in Illinois for but a short period,

he is in Illinois for temporary or transitory purposes, and will not be a resident by virtue of his presence here. If, however, an individual is in Illinois to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to Illinois with no definite intention of leaving shortly thereafter, he is in Illinois for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile also maintained in some other state.

1) Example 1. X is domiciled in Fairbanks, Alaska, where he had lived for 50 years and had accumulated a large fortune. For medical reasons, X moves to Illinois where he now spends his entire time, except for yearly summer trips of about three or four months duration to Fairbanks. X maintains an abode in Illinois and still maintains, and occupies on visits there, his old abode in Fairbanks. Notwithstanding his domicile abode in Fairbanks, because his yearly sojourn in Illinois is not temporary or transitory, he is a resident of Illinois, and is taxable on his entire net income.

AGENCY NOTE: If in the foregoing example, the facts are reversed so that Illinois is the state of original domicile and Alaska is the state in which the person is present for the indicated periods and purposes, X is not a resident of Illinois within the meaning of the law, because he is absent from Illinois for other than temporary or transitory purposes.

2) Example 2. Until the summer of 1959, Y admitted domicile in Illinois. At that time, however, to avoid the Illinois Income Tax, Y declared himself to be domiciled in Nevada, where he had a summer home. Y moved his bank accounts to banks in Nevada, and each year thereafter spent about three or four months in Nevada. He continued to spend six or seven months of each year at his estate in Illinois, which he continued to maintain, and continued his social club and business connections in Illinois. The months not spent in Nevada or Illinois he spent traveling in other states. Y is a resident of Illinois and is taxable on his entire net income, for his sojourns in Illinois are not for temporary or transitory purposes.

AGENCY NOTE: If in the foregoing two examples, the facts are reversed so that Illinois is the state of domicile and the other states are those in which the person is present for the indicated periods and purposes, X and Y are not residents of

Illinois when the meaning of the law because they are absent from Illinois for other than temporary or transitory purposes. If, in the foregoing example, the facts are reversed so that Nevada is the state of his original domicile and the state in which the person is present for the indicated periods and purposes, Y is not a resident of Illinois within the meaning of the law because he is absent from Illinois for other than temporary or transitory purposes.

3) Example 3. B and C, husband and wife, domiciled in Minnesota where they maintain their family home, come to Illinois each November and stay here until the middle of March. Originally they rented an apartment or house for the duration of their stay here but three years ago they purchased a house here. The house is either rented or put in the charge of a caretaker from March to November. B has retired from active control of his Minnesota business but still keeps office space and postal authority in it. He belongs to clubs in Minnesota, but to none in Illinois. He has no business interests in Illinois. C has little social life in Illinois, more in Minnesota, and has no relatives in Illinois. Neither B nor C is a resident of Illinois. The connection of each to Minnesota, the state of domicile, in each year is closer than it is to Illinois. Their presence here is for temporary or transitory purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Illinois is the state of domicile and B and C are visitors to Minnesota, B and C are residents of Illinois.

d) Domicile-

Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, the place to which he intends to return whenever he is absent. It is the place in which an individual has voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. Another definition of "domicile" consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom. An individual can at any one time have but one domicile. If an individual has acquired another domicile, he retains that domicile until he acquires another also. Thus, if an individual, who has acquired a domicile in California, for example, comes to Illinois for a rest or vacation or on business or for some other purpose, but intends either to return to California or to go elsewhere as soon as his purpose in Illinois

NOTICE OF ADOPTED AMENDMENTS

is achieved, he retains his domicile in California and does not acquire a domicile in Illinois even though he maintains a home in Illinois for himself and his family, has the family with him and remains in Illinois a considerable period of time. Likewise, an individual who is domiciled in Illinois and who leaves the state retains his Illinois domicile as long as he has the definite intention of returning to Illinois regardless of the length of time or the reasons why he is absent from the state. On the other hand, an individual, domiciled in California, who comes to Illinois with the intention of remaining indefinitely and with no fixed intention of returning to California loses his California domicile and acquires an Illinois domicile the moment he enters the state. Similarly, an individual domiciled in Illinois loses his Illinois domicile:

1) by locating elsewhere with the intention of establishing the new location as his domicile, and

2) by abandoning any intention of returning to Illinois.

2) Married women and minors

1) Generally, spouses living together have the same domicile that of the husband. The domicile of a minor is ordinarily the same as the domicile of his father parents or guardian. If the father is deceased, the domicile of a minor is ordinarily the same as the domicile of his mother and vice versa. In either case, if the minor's parents are divorced, the domicile of the minor is the same as the domicile of the parent having custody.

2) Acquiring by a man is domiciled in Illinois his wife and minor children generally are likewise domiciled in Illinois even though a man is not domiciled in Illinois if his wife and minor children are residents of this State if they are in Illinois for a longer period of time than they are in any other State.

7) Presumption of residence and nonresidence

If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. The presumption is not conclusive but may be overcome by satisfactory evidence that he is in Illinois for a longer period of time than he is in any other State. There is no presumption that a person operating a business in Illinois is a nonresident. On the contrary, a person may be a resident even though not in the State during any portion of the year. Similarly, if an individual who is domiciled in Illinois for the entire taxable year spends any part of his taxable year in Illinois it will be presumed that he is

NOTICE OF ADOPTED AMENDMENTS

a resident of Illinois. This presumption again is not conclusive but may be overcome by satisfactory evidence that his presence in Illinois was for a temporary or transitory purpose only. There is no presumption that a person is a nonresident simply because he is absent from Illinois for more than a year on the contrary, a person may be a resident even though absent for more than a year if the absence is for a temporary or transitory purpose only. For example, a person may have enlisted in the Armed Forces for a limited period and be assigned to another state or abroad for the whole term of his enlistment except for a change of domicile. The person is absent would be for a temporary or transitory purpose and he would remain a resident of Illinois (See paragraph (b) below.) An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois. These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary.

9) Proof of residence or nonresidence

1) The type and amount of proof that will be required in all cases to rebut or overcome a presumption of residence and to establish that an individual is a nonresident or nonresidence cannot be specified by a general regulation, but will depend largely on the circumstances of each particular case. The taxpayer may submit any relevant evidence to the Department for its consideration. Such evidence may include, but is not limited to, affidavits, evidence of: voter registration, automobile or driver license registration, filing an income tax return as a resident of another state, home ownership or rental agreements, club and/or organizational memberships and participation, telephone and/or utility usage over a duration of time. In appropriate instances, the Department may request any relevant evidence which may assist it in determining the taxpayer's place of residence.

A) Ordinarily, affidavits or testimony of an individual and of his friends, employers or business associates that the individual was in Illinois for a year or more, or that he completed a particular business transaction or worked for a limited period of time, will be sufficient to overcome any presumption of residence here in the case of an individual who claims to be nonresident in the State of Illinois outside Illinois for other than temporary or transitory purposes. Affidavits of friends and business associates as to the reasons for being outside the State should be submitted.

B) Affidavits that an individual votes in of files income tax returns as a resident of some other State, although

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

~~relevant in determining an individual's domicile are otherwise of like value in determining one's residence. The weight shall be given to the fact that shareholders' estates are made to characterize either within or without Illinois.~~

- 2) If an individual is presumed under this regulation (86 Ill. Adm. Code 100.3250) to be a resident for any taxable year, he should file a return for that year even though he believes he was a nonresident who, as such, would not incur an Illinois income tax liability because he would have no income allocable or apportioned to Illinois. Such a return will enable the individual to avoid the possible imposition of penalties for failure to file under IITA Section 1001 should it later be determined that he was a resident for the taxable year. The return should be marked as a nonresident return, though Schedule NR is not required. The return should exhibit the computation of net income as though the individual were a resident. The line on the return provided for entering the tax liability should have the following notation: "No liability--nonresident." The return should be accompanied by a signed statement indicating which presumption of residence the individual was subject to and setting forth in detail the reasons why the individual believes he was a nonresident for the taxable year. The return should also be accompanied by any evidence such as certificates or affidavits that the individual is able to obtain showing that he was a nonresident for the taxable year. If the Department is not satisfied that the individual was a nonresident, it will so inform the individual and provide him with an opportunity to submit additional information supporting his contention. If the individual fails to submit additional information, or if the additional information submitted does not, when considered with the information appended to the return, overcome the presumption that the individual was a resident for the taxable year, the Department will issue a notice of deficiency asserting a liability against the individual on the following basis:
 - A) that the individual is a resident for the taxable year, and
 - B) that the individual's net income for the taxable year is:
 - i) the amount reflected, with appropriate mathematical error adjustments under IITA Section 903(a)(1), on the return filed by the individual under this paragraph or
 - ii) whatever other amount the Department has determined by an examination under IITA Section 904.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

- 3) An individual who, for any taxable year, believes himself to be a nonresident, but who is presumed to be a resident under this regulation (86 Ill. Adm. Code 100.3250) may file his return (including a Schedule NR) as a nonresident if, as a nonresident, he incurs an Illinois income tax liability due to income allocated or apportioned to Illinois as a nonresident. However, the return should be accompanied by a signed statement indicating which presumption of residence the individual is subject to and setting forth in detail the reasons why the individual believes he was a nonresident for the taxable year. The return should also be accompanied by any evidence such as certificates or affidavits that the individual is able to obtain showing that he was a nonresident for the taxable year. If the Department is not satisfied that the individual was a nonresident, it will so inform the individual and provide him with an opportunity to submit additional information supporting his contention. If the individual fails to submit additional information, or if the additional information submitted does not, when considered with the information appended to the return, overcome the presumption that the individual was a resident for the taxable year, the Department will issue a notice of deficiency asserting a liability against the individual on the following basis:
 - A) that the individual was a resident for the taxable year,
 - B) that the individual's net income for the taxable year is:
 - i) his entire base income, as reflected on his return with appropriate mathematical error adjustments under IITA Section 903(a)(1), less the appropriate standard exemption prescribed by IITA Section 204 or
 - ii) his entire base income, as determined by the Department in an examination under IITA Section 904, less the appropriate standard exemption prescribed by IITA Section 204.
- h) Military personnel
 - i) Under 50 U.S.C. App. 574, members of the U.S. Armed Forces (and commissioned officers of the U. S. Public Health Service) will not cease to be domiciled in Illinois solely by reason of their assignment to duty in other states for long periods; domiciliaries of other states will not become Illinois residents under the Act solely by reason of their presence in Illinois under military orders.
 - i) Resident: Legal Definition: Usage

The term "resident" is defined differently for different purposes. For example, an individual may be a "resident" for Illinois income tax purposes but not a "resident" eligible to vote (cf. Ill. Rev. Stat., ch. 120, pars. 15-1501(a)(20) with Ill. Rev. Stat., ch. 46, pars. 3-1 through 3-4) Section 15-1501(a)(20) of the ITRA with Sections 3-1 through 3-4 of the Election Code (Ill. Rev. Stat., ch. 46, pars. 3-1 through 3-4)). Similarly, a person may be a resident of Illinois for Illinois income tax purposes, and also a resident of another state for purposes of that state's income tax law (cf. Ill. Rev. Stat., ch. 120, pars. Section 15-1501(a)(20) of the ITRA with Ill. Stat., ch. 71, sec. 71.01(1)).

(Source: Amended at 14 Ill. Reg. 6810 effective April 19, 1990.)

- 1) Heading of the Part: Motor Fuel Tax
- 2) Code Citation: 86 Ill. Adm. Code 500
- 3) Section Numbers: 500.101 Adopted Action: Amendment
- 4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 120, pars. 417 - 434a
- 5) Effective Date of Amendment(s): April 19, 1990
- 6) Does this rulemaking contain an automatic repeal date? Yes No
- 7) Does this amendment contain incorporations by reference? No
- 8) Date Filed in Agency's Principal Office: April 19, 1990
- 9) Notice of Proposal Published in Illinois Register: August 18, 1989, 13 Ill. Reg. 13201 (Issue date)
- 10) Has JCAG Issued a Statement of Objections to this Rule? No
- 11) Differences between proposal and final version: At the request of the Administrative Code Division, the following changes were made:
 - 1. In required question #1, included the term "regulations" in the heading of this Part.
 - 2. In the Authority Note in the statutory citation, changed "par. 417-434.a." to "par. 417 et seq."
 - 3. In the main source note immediately before the action added for this rulemaking, added "emergency amendments at 13 Ill. Reg. 13271, effective August 7, 1989, for a maximum of 150 days."
 - 4. In Section 101(a)(1) and (2), moved the lists of dates to the right 1/2 inch as if they were being labeled at the third level of subsections. Also, added subsection (b) for this Section which was inadvertently omitted. Also, at the end of this Section, specified the Section(s) and the title of the Act from which this statutory action was taken.
- 12) Have all the changes agreed upon by the agency and JCAG been made as indicated in the agreement letter issued by JCAG? No agreements were necessary.

EXHIBIT D

2012 IL App (1st) 112833
Appellate Court of Illinois,
First District, First Division.

Tyler R. CAIN and Talbot D. Cain,
Plaintiffs–Appellees and Cross–Appellants,
v.

Brian HAMER, in his official capacity as
Director, Illinois Department of Revenue;
The Illinois Department of Revenue; and
Judith Baar Topinka, in her official capacity
as State Treasurer of the State of Illinois,
Defendants–Appellants and Cross–Appellees.

No. 1–11–2833.

|
July 16, 2012.

Synopsis

Background: Taxpayers brought declaratory judgment action seeking declaration that they were not residents of Illinois for income tax purposes. The Circuit Court, Cook County, Elmer J. Tolmaire, III, J., granted summary judgment to taxpayers. State Department of Revenue appealed and taxpayers cross-appealed.

[Holding:] The Appellate Court, Hoffman, P.J., held that taxpayers were not residents of Illinois as would trigger requirement for payment of income tax.

Affirmed in part and dismissed in part.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (2)

[1] **Evidence** ⇨ Nature and scope in general

The term “burden of proof” encompasses both the burden of producing evidence that will satisfy a judge of the existence of an alleged fact and the burden of persuading the trier of fact that the alleged fact is true.

1 Cases that cite this headnote

[2] **Taxation** ⇨ Residence during portion of tax period

Taxpayers were not “residents” of Illinois, as would trigger requirement for payment of income tax, even though taxpayers engaged in regular seasonal visits to Illinois and split their time roughly equally between Florida and Illinois, where taxpayers had left their Illinois home, renounced their Illinois residency, physically moved to Florida, declared Florida their domicile, changed their voter registrations to Florida, paid Florida income taxes, obtained drivers' licenses in Florida, spent more money in Florida than in Illinois, and purchased burial plots in Florida. S.H.A. ¶ 35 ILCS 5/201(a).

1 Cases that cite this headnote

Attorneys and Law Firms

*322 Lisa Madigan, Attorney General, Chicago (Michael A. Scodro, Solicitor General, and Timothy K. McPike, Assistant Attorney General, of counsel), for appellants.

Reed Smith LLP, Chicago (Michael J. Wynne, Michael D. Richman, and Adam P. Beckerink, of counsel), for appellees.

OPINION

Presiding Justice HOFFMAN delivered the judgment of the court, with opinion.

**520 ¶ 1 The defendants, the Illinois Department of Revenue (Department), the Department's Director Brian Hamer, and Illinois State Treasurer Judith Baar Topinka, appeal the decision of the circuit court granting summary judgment to the plaintiffs, Tyler and Talbot Cain, on their complaint for a declaration that they are not required to pay resident Illinois income taxes for the years from 1996 through 2004. On appeal, the parties dispute whether the plaintiffs qualified as Illinois residents during the relevant time period. The plaintiffs have also cross-appealed to argue that, in the event they were residents during the relevant time period, the

Department should be barred from collecting their taxes due to certain procedural infirmities. For the reasons that follow, we affirm the judgment of the circuit court on the defendants' appeal, and we dismiss the plaintiffs' cross-appeal as moot.

¶ 2 In August 2006, the Department sent the plaintiffs a notice of tax deficiency, which asserted that the plaintiffs owed \$1,842,582 in unpaid income taxes and penalties for the years from 1996 through 2004. After submitting payment under protest, the plaintiffs filed a complaint seeking a declaration that they were not Illinois residents during the disputed period. Prior to filing cross-motions for summary judgment, the parties stipulated to the facts of the case.

¶ 3 As the stipulation recites, the plaintiffs married "46 years ago" (approximately 1964, by the date of the stipulation's filing) and began living in Illinois, where Mr. Cain worked as a self-employed trader at the Chicago Board of Options Exchange until 1990. They lived in their longtime Illinois home until 1995, when they purchased another lot in Illinois as part of a **521 *323 plan to sell their old home and build a smaller one. They eventually abandoned that plan, and, in August 1995, began work on an addition to their longtime Illinois home.

¶ 4 In November 1995, the plaintiffs executed and filed in Florida a "declaration of domicile" indicating that they had changed their domicile from Illinois to a Florida home they had constructed in 1990. In the document, the plaintiffs renounced their Illinois residency and declared themselves Florida residents. In 1995 and 1996, the plaintiffs obtained permanent-resident identification cards in Florida. The plaintiffs also held Florida drivers' licenses, voted in Florida, and received Florida jury duty summonses in the relevant time period, and Mr. Cain held a Florida firearm license. They had newspapers delivered to their Florida residence, and Mr. Cain used a cellular telephone with a Florida area code. They also purchased burial plots in Florida.

¶ 5 During the relevant period, the plaintiffs developed relationships with several medical professionals in Florida, but they also continued relationships with Illinois doctors. Likewise, the plaintiffs retained legal advisors in both states. They used Illinois income tax preparers to help them file their federal tax returns, and they made political contributions to Illinois and national candidates, and some other-state candidates, but no Florida candidates.

¶ 6 During the relevant period, the plaintiffs divided their time between Illinois and Florida, with only minimal variation in the time allotment from year to year. In 1996, for example, they spent 159 days in Florida, 161 in Illinois, and 45 elsewhere, while, in 2004, the plaintiffs spent 170 days in Florida, 171 in Illinois, and 24 elsewhere. In total, from 1996 through 2005, the plaintiffs spent 1,700 days in Florida, 1,666 in Illinois, and 284 elsewhere. Testimonial evidence indicated that the plaintiffs had a pattern of going to Florida near the end of October, returning to Illinois for the Christmas holiday, then returning to Florida until May of each year.

¶ 7 The stipulation cites the plaintiffs' July 2001 through August 2004 credit card statements as showing that "73% of their expenditures were made outside of Illinois, and they were making those expenditures outside of Illinois 61% of the time." The plaintiffs maintained private club memberships in both states: their expenditures at those clubs for the years 2003 through 2007 totaled approximately \$236,000 for the Illinois clubs and \$422,500 for the Florida clubs. Mrs. Cain participated in a Florida bridge club, and the plaintiffs were members, board members, or committee members of several organizations in both Florida and Illinois. They attended regularly scheduled meetings at clubs in both states.

¶ 8 Mrs. Cain, an interior designer, renewed her Illinois interior designer license throughout the relevant period, and, on her renewal forms, she did not indicate that her address had changed. However, she never used her decorator's license for business in either Illinois or Florida.

¶ 9 Although the plaintiffs owned companies during the relevant period, they had limited involvement in those companies. They also controlled a foundation that made charitable donations in both Florida and Illinois, but Mr. Cain was shifting the contributions to focus more on Florida charities.

¶ 10 After considering the parties' cross motions for summary judgment based on these stipulated facts, the circuit court ruled that the plaintiffs were "mere seasonal visitors," not residents, of Illinois. **522 *324 Accordingly, the circuit court granted the plaintiffs' motion for summary judgment and denied the defendants' cross-motion. Because there were other matters pending at the time, including claims for discovery sanctions against the defendants, the circuit court entered a finding that there was no just reason to delay enforcement or appeal of its summary judgment order. See

Ill. S.Ct. R. 304(a) (eff. Feb. 26, 2010). The defendants now appeal.

¶ 11 On appeal, the defendants argue that the circuit court erred in granting the plaintiffs' motion for summary judgment and ruling that they did not owe Illinois income tax from 1996 through 2004. "Summary judgment is proper where 'the pleadings, depositions, 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.'" *Empress Casino Joliet Corp. v. Giannoulis*, 231 Ill.2d 62, 68–69, 324 Ill.Dec. 491, 896 N.E.2d 277 (2008) (quoting 735 ILCS 5/2–1005(c) (West 2000)). "We review the circuit court's grant of summary judgment *de novo*." *Empress Casino*, 231 Ill.2d at 69, 324 Ill.Dec. 491, 896 N.E.2d 277.

¶ 12 The parties spend some effort disputing the burden of proof applicable to the plaintiffs in this case. The dispute, however, is somewhat misdirected. "[T]he term 'burden of proof' encompasses both the burden of producing evidence that will satisfy a judge of the existence of an alleged fact and the burden of persuading the trier of fact that the alleged fact is true." *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill.2d 452, 462, 69 Ill.Dec. 960, 448 N.E.2d 872 (1983). Here, there are no disputed facts. The parties stipulated to all the relevant facts and submitted the matter to the court for a legal decision. To the extent the stipulated facts establish the plaintiffs' change of residence as a matter of law, the plaintiffs have carried any burden of proof assigned to them. Thus, this burden-of-proof question is no more than a reframing of the real issue on appeal: whether, under the stipulated facts, the plaintiffs were obligated to pay Illinois income tax from 1996 through 2004. We address that issue now.

¶ 13 Section 201(a) of the Illinois Income Tax Act (Act) (35 ILCS 5/201(a) (West 2010)) imposes an income tax "on the privilege of earning or receiving income in or as a resident of this State." The parties focus their arguments on the question of whether the plaintiffs were Illinois residents during the relevant time period. Although there are many Illinois decisions defining the concept of residency in several different contexts, those decisions are not controlling here. As explained in the Department's regulations related to the Act, "[t]he term 'resident' is defined differently for different purposes. For example, an individual may be a 'resident' for Illinois income tax purposes but not a 'resident' eligible to vote." 86 Ill. Adm. Code 100.3020(i)(2012).

¶ 14 In lieu of citing unrelated case law, the parties rely primarily on the controlling statutes and regulations. The first of those statutes, section 1501(a)(20)(A) of the Act, defines the word "resident" as "an individual (i) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year." 35 ILCS 5/1501(a)(20)(A) (West 2010). The Act further explains the term "resident" in section 1501(a)(17), which defines the term "part-year resident" as follows:

"The term 'part-year resident' means an individual who became a resident **523 *325 during the taxable year or ceased to be a resident during the taxable year. Under

Section 1501(a)(20)(A)(i) residence commences with presence in this State for other than a temporary or transitory purpose and ceases with absence from this State for other than a temporary or transitory purpose. Under

Section 1501(a)(20)(A)(ii) residence commences with the establishment of domicile in this State and ceases with the establishment of domicile in another State." 35 ILCS 5/1501(a)(17) (West 2010).

¶ 15 The Department's regulations expound on these definitions of "resident":

"The purpose of the general definition is to include in the category of individuals who are taxable on their entire net income, regardless of whether derived from sources within or without Illinois, all individuals who are physically present in Illinois enjoying the benefit of its government, except those individuals who are here temporarily, and to exclude from this category, all individuals, who, although domiciled in Illinois, are outside Illinois for other than temporary and transitory purposes, and, hence, do not obtain the benefit of Illinois government. If an individual acquires the status of a resident by virtue of being physically present in Illinois for other than temporary or transitory purposes, he remains a resident even though temporarily absent from Illinois. If, however, he leaves Illinois for other than temporary or transitory purposes, he thereupon ceases to be a resident. If an individual is domiciled in Illinois, he remains a resident unless he is outside Illinois for other than temporary or transitory purposes." 86 Ill. Adm. Code 100.3020(b).

¶ 16 Under the above statutory and regulatory language, individuals are considered Illinois residents if they are present in the state for other than a “temporary or transitory purpose” or are “domiciled” in Illinois but leave for a temporary or transitory purpose. ¶ 35 ILCS 5/1501(a)(20)(A) (West 2010). If individuals leave the state for other than a temporary or transitory purpose, or establish domicile elsewhere, they cease to be Illinois residents. ¶ 35 ILCS 5/1501(a)(17) (West 2010). The plaintiffs here were admittedly Illinois residents prior to their move to Florida in 1995. The questions for us are whether their move to Florida constituted a change in domicile or a departure from Illinois for “other than a temporary or transitory purpose” so that they lost their Illinois residency, and, conversely, whether their periodic returns to Illinois were for “other for a temporary or transitory purpose” so that they should be classified as Illinois residents.

¶ 17 We begin by examining whether the plaintiffs can be said to have changed their domicile to Florida. Although the Act does not define the term “domicile,” the Department’s regulations do:

“Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, the place to which he intends to return whenever he is absent. It is the place in which an individual has voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. Another definition of ‘domicile’ consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom. An individual can at any one time have but one domicile. If an individual has acquired **524 *326 a domicile at one place, he retains that domicile until he acquires another elsewhere. Thus, if an individual, who has acquired a domicile in California, for example, comes to Illinois for a rest or vacation or on business or for some other purpose, but intends either to return to California or to go elsewhere as soon as his purpose in Illinois is achieved, he retains his domicile in California and does not acquire a domicile in Illinois. Likewise, an individual who is domiciled in Illinois and who leaves the state retains his Illinois domicile as long as he has the definite intention of returning to Illinois. On the other hand, an individual, domiciled in California, who comes to Illinois with the intention of

remaining indefinitely and with no fixed intention of returning to California loses his California domicile and acquires an Illinois domicile the moment he enters the state. Similarly, an individual domiciled in Illinois loses his Illinois domicile:

- 1) by locating elsewhere with the intention of establishing the new location as his domicile, and
- 2) by abandoning any intention of returning to Illinois.” 86 Ill. Adm. Code 100.3020(d).

¶ 18 As the defendants observe in their brief, this definition of “domicile” closely tracks the definition Illinois law ascribes the term generally. See, e.g., ¶ Viking Dodge Inc. v. Hoffman, 147 Ill.App.3d 203, 205, 101 Ill.Dec. 33, 497 N.E.2d 1346 (1986) (“The four elements required for a change of domicile are physical abandonment of the first domicile; an intent not to return to the first domicile; physical presence in the new domicile; and an intent to make that one’s domicile.”) Here, there is no dispute that, in 1995, the plaintiffs physically left their Illinois home, renounced their Illinois residency, physically moved to Florida, and declared Florida their domicile. The difficulty comes in determining whether the plaintiffs “abandon[ed] any intention of returning” to their Illinois home.

¶ 19 After their move, the plaintiffs split their time roughly equally between the two states. Thus, in some sense, the plaintiffs have maintained an intent to return to both Illinois and Florida for approximately half of their time throughout the relevant period. However, as the regulations explain, individuals may have only one domicile, and none of the parties propose that the plaintiffs’ domicile alternated between the two states. Accordingly, this concept of “intent to return” cannot govern our result. Instead, we rely on the concept of domicile as an intended permanent home (and of “return” as a permanent, indefinite, or lengthy return). In that sense, the plaintiffs chose Florida as their domicile. Although they maintained contacts and memberships (and real property holdings) in Illinois after their 1995 move, the plaintiffs changed their voter registrations to Florida, paid Florida income taxes, obtained residency cards and drivers’ licenses in Florida, and even filed a declaration of their Florida residency. Thus, the plaintiffs’ intent is quite clear: they wished to establish Florida as their permanent residence in 1995, even though they planned to keep ties in Illinois and have regular seasonal visits. That is, the plaintiffs intended to live in

Florida for half the year and visit Illinois, not the other way around.

¶ 20 Our conception of “domicile” finds harmony with the regulatory explanation of the other major component of a residency analysis under the Act: the idea of individuals' presence in, or departure from, the state being for a “temporary or transitory purpose.” The Department's regulations define this phrase at some length:

***327 **525** “Whether or not the purpose for which an individual is in Illinois will be considered temporary or transitory in character will depend upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through Illinois on his way to another state, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in Illinois for but a short period, he is in Illinois for temporary or transitory purposes, and will not be a resident by virtue of his presence here. If, however, an individual is in Illinois to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to Illinois with no definite intention of leaving shortly thereafter, he is in Illinois for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may also maintain an abode in some other state.” 86 Ill. Adm. Code 100.3020(c).

¶ 21 This prefatory portion of the regulatory definition provides us little guidance. The plaintiffs' presence in Illinois was not “simply passing through * * *, here for a brief * * * vacation, or to complete a particular transaction,” or the like, nor was their presence “long or indefinite” or “permanent[] or indefinite[].” 86 Ill. Adm. Code 100.30209c). The regulations follow, however, with several helpful illustrations:

“1) Example 1. X is domiciled in Fairbanks, Alaska, where he had lived for 50 years and had accumulated a large fortune. For medical reasons, X moves to Illinois where he now spends his entire time, except for yearly summer trips of about three or four months duration to Fairbanks. X maintains an abode in Illinois and still maintains, and occupies on visits there, his old abode in Fairbanks. Notwithstanding his abode in Fairbanks, because his yearly

sojourn in Illinois is not temporary or transitory, he is a resident of Illinois, and is taxable on his entire net income.

AGENCY NOTE: If in the foregoing example, the facts are reversed so that Illinois is the state of original domicile and Alaska is the state in which the person is present for the indicated periods and purposes, X is not a resident of Illinois within the meaning of the law, because he is absent from Illinois for other than temporary or transitory purposes.

2) Example 2. Until the summer of 1969, Y admitted domicile in Illinois. At that time, however, to avoid the Illinois income tax, Y declared himself to be domiciled in Nevada, where he had a summer home. Y moved his bank accounts to banks in Nevada, and each year thereafter spent about three or four months in Nevada. He continued to spend six or seven months of each year at his estate in Illinois, which he continued to maintain, and continued his social club and business connections in Illinois. The months not spent in Nevada or Illinois he spent traveling in other states. Y is a resident of Illinois and is taxable on his entire net income, for his sojourns in Illinois are not for temporary or transitory purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Nevada is the state of his original domicile, and the state in which the ****526 *328** person is present for the indicated periods and purposes, Y is not a resident of Illinois within the meaning of the law because he is absent from Illinois for other than temporary or transitory purposes.

3) Example 3. B and C, husband and wife, domiciled in Minnesota where they maintain their family home, come to Illinois each November and stay here until the middle of March. Originally they rented an apartment or house for the duration of their stay here but three years ago they purchased a house here. The house is either rented or put in the charge of a caretaker from March to November. B has retired from active control of his Minnesota business but still keeps office space and nominal authority in it. He belongs to clubs in Minnesota, but to none in Illinois. He has no business interests in Illinois. C has little social life in Illinois, more in Minnesota, and has no relatives in Illinois. Neither B nor C is a resident of Illinois. The connection of each to Minnesota, the state of domicile, in each year is closer than it is to Illinois. Their presence here is for temporary or transitory purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Illinois is the state of domicile and B and C are visitors to Minnesota, B and C are residents of Illinois.” 86 Ill. Adm. Code 100.3020(c).

¶ 22 The most challenging aspect of this case is the fact that the plaintiffs split their time roughly equally between Florida and Illinois. However, the above examples make clear that this level of time-splitting does not render individuals' presence in Illinois other than “temporary or transitory.” In the first two examples above, the hypothetical individuals' three- to four-month yearly trips to another state do not affect their residency, because other factors regarding their intent are considered controlling. The third example is particularly telling. In this example, the hypothetical individuals spend over four months in Illinois and actually own a home in Illinois, but are nonetheless considered Minnesota residents because “[t]he connection of each to Minnesota * * * in each year is closer than it is to Illinois.” The same holds true here. Although the plaintiffs maintain some Illinois ties, including social club memberships and the continued ownership of their longtime home, the stipulated facts demonstrate their much stronger connection to Florida. As noted, they spend more money on Florida social clubs, hold drivers' licenses and residency cards in Florida, and vote in Florida. Mr. Cain uses a Florida telephone number. Although the ties between Illinois and their companies continue, the plaintiffs have distanced themselves from their companies. Likewise, although the plaintiffs' charitable foundation is still involved in Illinois causes, the plaintiffs have begun to shift its focus to Florida. The plaintiffs also spend more money in Florida than in Illinois, and they have purchased burial plots in Florida. All of these facts demonstrate the plaintiffs' much stronger connection to Florida than to Illinois. Based on the examples given in the regulations' definition of “temporary and transitory purpose,” the regularity and duration of the plaintiffs' visits to Illinois do not affect their residency status in the face of this disparity in connections.

¶ 23 One last portion of the Department's regulations lends further support to our conclusion that the plaintiffs were

not Illinois residents for purposes of the Act during the relevant period. After laying out the above definitions, the Department's regulations list types of evidence that may help to determine whether an individual is an Illinois resident. Those **527 *329 types of evidence include evidence of “voter registration, automobile or drivers license registration, filing an income tax return as a resident of another state, home ownership or rental agreements, club and/or organizational memberships and participation, telephone and/or other utility usage over a duration of time.” 86 Ill. Adm. Code 100.3020(g) (1). Because we have already described the plaintiffs' actions at length, we will not repeat those facts to discuss each of these types of evidence individually. Instead, we note that the balance of these factors leads us to conclude that, for purposes of the Act, the plaintiffs were residents of Florida, and not Illinois, during the relevant time period. For that reason, and for the reasons stated above, we reject the defendants' argument that the circuit court erred in granting summary judgment to the plaintiffs.

¶ 24 Although the plaintiffs have filed a cross-appeal, their cross-appeal is devoted to providing another, separate basis for excusing them from Illinois income tax for the relevant time period. In their brief, the plaintiffs explain that their cross-appeal “will be unnecessary to decide if [we] affirm[]” the circuit court's judgment. Because we do, indeed, affirm the circuit court's judgment, we dismiss the cross-appeal as moot.

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court and dismiss the plaintiffs' cross-appeal.

¶ 26 Affirmed; cross-appeal dismissed.

Justices KARNEZIS and ROCHFORD concurred in the judgment and opinion.

All Citations

2012 IL App (1st) 112833, 975 N.E.2d 321, 363 Ill.Dec. 519

EXHIBIT E

2013

ILLINOIS

REGISTER

Rules of
Governmental Agencies

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Administrative Code Division
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DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.3020 Adopted Action:
Amendment
- 4) Statutory Authority: 35 ILCS 5/1501(a)(20)
- 5) Effective Date of Rulemaking: April 19, 2013
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Department of Revenue's principal office and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 36 Ill. Reg. 18149; December 28, 2012
- 10) Has JCAR issued a Statement of Objection to this Rulemaking? No
- 11) Differences between Proposal and Final Version: Several non-substantive grammatical corrections were made and in Section 100.2030(h) changed 574 to 571. These changes were made in agreement with JCAR.

In Section 100.3020(g)(1) in the first sentence after "all cases to" added "establish residency or nonresidency or to" and after "presumption of residence" struck "or nonresidence". These changes were made based upon comments received during the First Notice period.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any proposed rulemakings pending on this Part? No

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- 15) Summary and Purpose of Rulemaking: This rulemaking amends the regulation providing guidance on determining whether or not an individual is a resident of Illinois to address issues that have arisen in recent years.
- 16) Information and questions regarding this adopted amendment shall be directed to:

Paul Caselton
Deputy General Counsel – Income Tax
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794

217/782-7055

The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 100
INCOME TAX

SUBPART A: TAX IMPOSED

Section	
100.2000	Introduction
100.2050	Net Income (IITA Section 202)

SUBPART B: CREDITS

Section	
100.2100	Replacement Tax Investment Credit Prior to January 1, 1994 (IITA 201(e))
100.2101	Replacement Tax Investment Credit (IITA 201(e))
100.2110	Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA 201(f))
100.2120	Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone (IITA 201(g))
100.2130	Investment Credit; High Impact Business (IITA 201(h))
100.2140	Credit Against Income Tax for Replacement Tax (IITA 201(i))
100.2150	Training Expense Credit (IITA 201(j))
100.2160	Research and Development Credit (IITA 201(k))
100.2163	Environmental Remediation Credit (IITA 201(l))
100.2165	Education Expense Credit (IITA 201(m))
100.2170	Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)
100.2180	Credit for Residential Real Property Taxes (IITA 208)
100.2185	Film Production Services Credit (IITA 213)
100.2190	Tax Credit for Affordable Housing Donations (IITA Section 214)
100.2193	Student-Assistance Contributions Credit (IITA 218)
100.2195	Dependent Care Assistance Program Tax Credit (IITA 210)
100.2196	Employee Child Care Assistance Program Tax Credit (IITA Section 210.5)
100.2197	Foreign Tax Credit (IITA Section 601(b)(3))
100.2198	Economic Development for a Growing Economy Credit (IITA 211)
100.2199	Illinois Earned Income Tax Credit (IITA Section 212)

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

OCCURRING PRIOR TO DECEMBER 31, 1986

Section	
100.2200	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Scope
100.2210	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) – Definitions
100.2220	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Current Net Operating Losses: Offsets Between Members
100.2230	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Carrybacks and Carryforwards
100.2240	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Effect of Combined Net Operating Loss in Computing Illinois Base Income
100.2250	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS FOR LOSSES
OCCURRING ON OR AFTER DECEMBER 31, 1986

Section	
100.2300	Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
100.2310	Computation of the Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
100.2320	Determination of the Amount of Illinois Net Loss for Losses Occurring On or After December 31, 1986
100.2330	Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring On or After December 31, 1986
100.2340	Illinois Net Losses and Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- 100.2350 Illinois Net Losses and Illinois Net Loss Deductions, for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Changes in Membership

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF INDIVIDUALS, CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

- Section
- 100.2405 Gross Income, Adjusted Gross Income, Taxable Income and Base Income Defined; Double Deductions Prohibited; Legislative Intention (IITA Section 203(e), (g) and (h))
- 100.2410 Net Operating Loss Carryovers for Individuals, and Capital Loss and Other Carryovers for All Taxpayers (IITA Section 203)
- 100.2430 Addition and Subtraction Modifications for Transactions with 80-20 and Noncombination Rule Companies
- 100.2435 Addition Modification for Student-Assistance Contribution Credit (IITA Sections 203(a)(2)(D-23), (b)(2)(E-16), (c)(2)(G-15), (d)(2)(D-10))
- 100.2450 IIT Refunds (IITA Section 203(a)(2)(H), (b)(2)(F), (c)(2)(J) and (d)(2)(F))
- 100.2455 Subtraction Modification: Federally Disallowed Deductions (IITA Sections 203(a)(2)(M), 203(b)(2)(I), 203(c)(2)(L) and 203(d)(2)(J))
- 100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (IITA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))
- 100.2480 Enterprise Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and 203(d)(2)(K))
- 100.2490 Foreign Trade Zone/High Impact Business Dividend Subtraction (IITA Sections 203(a)(2)(K), 203(b)(2)(L), 203(c)(2)(O), 203(d)(2)(M))

SUBPART F: BASE INCOME OF INDIVIDUALS

- Section
- 100.2510 Subtraction for Contributions to Illinois Qualified Tuition Programs (Section 529 Plans) (IITA Section 203(a)(2)(Y))
- 100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))
- 100.2590 Taxation of Certain Employees of Railroads, Motor Carriers, Air Carriers and Water Carriers

SUBPART G: BASE INCOME OF TRUSTS AND ESTATES

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

Section	
100.2655	Subtraction Modification for Enterprise Zone and River Edge Redevelopment Zone Interest (IITA Section 203(b)(2)(M))
100.2680	Capital Gain Income of Estates and Trusts Paid to or Permanently Set Aside for Charity (Repealed)

SUBPART I: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF BASE INCOME

Section	
100.3000	Terms Used in Article 3 (IITA Section 301)
100.3010	Business and Nonbusiness Income (IITA Section 301)
100.3015	Business Income Election (IITA Section 1501)
100.3020	Resident (IITA Section 301)

SUBPART J: COMPENSATION

Section	
100.3100	Compensation (IITA Section 302)
100.3110	State (IITA Section 302)
100.3120	Allocation of Compensation Paid to Nonresidents (IITA Section 302)

SUBPART K: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section	
100.3200	Taxability in Other State (IITA Section 303)
100.3210	Commercial Domicile (IITA Section 303)
100.3220	Allocation of Certain Items of Nonbusiness Income by Persons Other Than Residents (IITA Section 303)

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section	
100.3300	Allocation and Apportionment of Base Income (IITA Section 304)
100.3310	Business Income of Persons Other Than Residents (IITA Section 304) – In General
100.3320	Business Income of Persons Other Than Residents (IITA Section 304) – Apportionment (Repealed)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- 100.3330 Business Income of Persons Other Than Residents (IITA Section 304) -- Allocation
- 100.3340 Business Income of Persons Other Than Residents (IITA Section 304)
- 100.3350 Property Factor (IITA Section 304)
- 100.3360 Payroll Factor (IITA Section 304)
- 100.3370 Sales Factor (IITA Section 304)
- 100.3371 Sales Factor for Telecommunications Services
- 100.3373 Sales Factor for Publishing
- 100.3380 Special Rules (IITA Section 304)
- 100.3390 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))
- 100.3400 Apportionment of Business Income of Financial Organizations for Taxable Years Ending Prior to December 31, 2008 (IITA Section 304(c))
- 100.3405 Apportionment of Business Income of Financial Organizations for Taxable Years Ending on or after December 31, 2008 (IITA Section 304(c))
- 100.3420 Apportionment of Business Income of Insurance Companies (IITA Section 304(b))
- 100.3500 Allocation and Apportionment of Base Income by Nonresident Partners

SUBPART M: ACCOUNTING

Section

- 100.4500 Carryovers of Tax Attributes (IITA Section 405)

SUBPART N: TIME AND PLACE FOR FILING RETURNS

Section

- 100.5000 Time for Filing Returns: Individuals (IITA Section 505)
- 100.5010 Place for Filing Returns: All Taxpayers (IITA Section 505)
- 100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)
- 100.5030 Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (IITA Section 506)
- 100.5040 Innocent Spouses
- 100.5050 Frivolous Returns
- 100.5060 Reportable Transactions
- 100.5070 List of Investors in Potentially Abusive Tax Shelters and Reportable Transactions
- 100.5080 Registration of Tax Shelters (IITA Section 1405.5)

SUBPART O: COMPOSITE RETURNS

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

Section

- 100.5100 Composite Returns: Eligibility
- 100.5110 Composite Returns: Responsibilities of Authorized Agent
- 100.5120 Composite Returns: Individual Liability
- 100.5130 Composite Returns: Required forms and computation of Income
- 100.5140 Composite Returns: Estimated Payments
- 100.5150 Composite Returns: Tax, Penalties and Interest
- 100.5160 Composite Returns: Credits on Separate Returns
- 100.5170 Composite Returns: Definition of a "Lloyd's Plan of Operation"
- 100.5180 Composite Returns: Overpayments and Underpayments

SUBPART P: COMBINED RETURNS

Section

- 100.5200 Filing of Combined Returns
- 100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns
- 100.5205 Election to File a Combined Return
- 100.5210 Procedures for Elective and Mandatory Filing of Combined Returns
- 100.5215 Filing of Separate Unitary Returns
- 100.5220 Designated Agent for the Members
- 100.5230 Combined Estimated Tax Payments
- 100.5240 Claims for Credit of Overpayments
- 100.5250 Liability for Combined Tax, Penalty and Interest
- 100.5260 Combined Amended Returns
- 100.5265 Common Taxable Year
- 100.5270 Computation of Combined Net Income and Tax
- 100.5280 Combined Return Issues Related to Audits

SUBPART Q: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section

- 100.7000 Requirement of Withholding (IITA Section 701)
- 100.7010 Compensation Paid in this State (IITA Section 701)
- 100.7020 Transacting Business Within this State (IITA Section 701)
- 100.7030 Payments to Residents (IITA Section 701)
- 100.7035 Nonresident Partners, Subchapter S Corporation Shareholders, and Trust Beneficiaries (IITA Section 709.5)
- 100.7040 Employer Registration (IITA Section 701)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

100.7050	Computation of Amount Withheld (IITA Section 702)
100.7060	Additional Withholding (IITA Section 701)
100.7070	Voluntary Withholding (IITA Section 701)
100.7080	Correction of Underwithholding or Overwithholding (IITA Section 701)
100.7090	Reciprocal Agreement (IITA Section 701)
100.7095	Cross References

SUBPART R: AMOUNT EXEMPT FROM WITHHOLDING

Section	
100.7100	Withholding Exemption (IITA Section 702)
100.7110	Withholding Exemption Certificate (IITA Section 702)
100.7120	Exempt Withholding Under Reciprocal Agreements (IITA Section 702)

SUBPART S: INFORMATION STATEMENT

Section	
100.7200	Reports for Employee (IITA Section 703)

SUBPART T: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section	
100.7300	Returns and Payments of Income Tax Withheld from Wages (IITA Sections 704 and 704A)
100.7310	Returns Filed and Payments Made on Annual Basis (IITA Section 704)
100.7320	Time for Filing Returns and Making Payments for Taxes Required to Be Withheld Prior to January 1, 2008 (IITA Section 704)
100.7325	Time for Filing Returns and Making Payments for Taxes Required to Be Withheld On or After January 1, 2008 (IITA Section 704A)
100.7330	Payment of Tax Required to be Shown Due on a Return (IITA Sections 704 and 704A)
100.7340	Correction of Underwithholding or Overwithholding (IITA Section 704)
100.7350	Domestic Service Employment (IITA Sections 704 and 704A)
100.7360	Definitions and Special Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)
100.7370	Penalty and Interest Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)

SUBPART U: ESTIMATED TAX PAYMENTS

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

Section

- 100.8000 Payment of Estimated Tax (IITA Section 803)
100.8010 Failure to Pay Estimated Tax (IITA Sections 804 and 806)

SUBPART V: COLLECTION AUTHORITY

Section

- 100.9000 General Income Tax Procedures (IITA Section 901)
100.9010 Collection Authority (IITA Section 901)
100.9020 Child Support Collection (IITA Section 901)

SUBPART W: NOTICE AND DEMAND

Section

- 100.9100 Notice and Demand (IITA Section 902)

SUBPART X: ASSESSMENT

Section

- 100.9200 Assessment (IITA Section 903)
100.9210 Waiver of Restrictions on Assessment (IITA Section 907)

SUBPART Y: DEFICIENCIES AND OVERPAYMENTS

Section

- 100.9300 Deficiencies and Overpayments (IITA Section 904)
100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section 603)
100.9320 Limitations on Notices of Deficiency (IITA Section 905)
100.9330 Further Notices of Deficiency Restricted (IITA Section 906)

SUBPART Z: CREDITS AND REFUNDS

Section

- 100.9400 Credits and Refunds (IITA Section 909)
100.9410 Limitations on Claims for Refund (IITA Section 911)
100.9420 Recovery of Erroneous Refund (IITA Section 912)

SUBPART AA: INVESTIGATIONS AND HEARINGS

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

Section	
100.9500	Access to Books and Records (IITA Section 913)
100.9505	Access to Books and Records – 60-Day Letters (IITA Section 913) (Repealed)
100.9510	Taxpayer Representation and Practice Requirements
100.9520	Conduct of Investigations and Hearings (IITA Section 914)
100.9530	Books and Records

SUBPART BB: JUDICIAL REVIEW

Section	
100.9600	Administrative Review Law (IITA Section 1201)

SUBPART CC: DEFINITIONS

Section	
100.9700	Unitary Business Group Defined (IITA Section 1501)
100.9710	Financial Organizations (IITA Section 1501)
100.9720	Nexus
100.9730	Investment Partnerships (IITA Section 1501(a)(11.5))
100.9750	Corporation, Subchapter S Corporation, Partnership and Trust Defined (IITA Section 1501)

SUBPART DD: LETTER RULING PROCEDURES

Section	
100.9800	Letter Ruling Procedures

SUBPART EE: MISCELLANEOUS

Section	
100.9900	Tax Shelter Voluntary Compliance Program
100.APPENDIX A	Business Income Of Persons Other Than Residents
100.TABLE A	Example of Unitary Business Apportionment
100.TABLE B	Example of Unitary Business Apportionment for Groups Which Include Members Using Three-Factor and Single-Factor Formulas

AUTHORITY: Implementing the Illinois Income Tax Act [35 ILCS 5] and authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401].

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

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DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23, 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687, effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill. Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001; amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg. 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002; amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003, for a maximum of 150 days; emergency expired April 17, 2004; amended at 28 Ill. Reg. 1378, effective January 12, 2004; amended at 28 Ill. Reg. 5694, effective March 17, 2004; amended at 28 Ill. Reg. 7125, effective April 29, 2004; amended at 28 Ill. Reg. 8881, effective June 11, 2004; emergency amendment at 28 Ill. Reg. 14271, effective October 18, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 14868, effective October 26, 2004; emergency amendment at 28 Ill. Reg. 15858, effective November 29, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 2420, effective January 28, 2005; amended at 29 Ill. Reg. 6986, effective April 26, 2005; amended at 29 Ill. Reg. 13211, effective August 15, 2005; amended at 29 Ill. Reg. 20516, effective December 2, 2005; amended at 30 Ill. Reg. 6389, effective March 30, 2006; amended at 30 Ill. Reg. 10473, effective May 23, 2006; amended by 30 Ill. Reg. 13890, effective August 1, 2006; amended at 30 Ill. Reg. 18739, effective November 20, 2006; amended at 31 Ill. Reg. 16240, effective November 26, 2007; amended at 32 Ill. Reg. 872, effective January 7, 2008; amended at 32 Ill. Reg. 1407, effective January 17, 2008; amended at 32 Ill. Reg. 3400, effective February 25, 2008; amended at 32 Ill. Reg. 6055, effective March 25, 2008; amended at 32 Ill. Reg. 10170, effective June 30, 2008; amended at 32 Ill. Reg. 13223, effective July 24, 2008; amended at 32 Ill. Reg. 17492, effective October 24, 2008; amended at 33 Ill. Reg. 1195, effective December 31, 2008; amended at 33 Ill. Reg. 2306, effective January 23, 2009; amended at 33 Ill. Reg. 14168, effective September 28, 2009; amended at 33 Ill. Reg. 15044, effective October 26, 2009; amended at 34 Ill. Reg. 550, effective December 22, 2009; amended at 34 Ill. Reg. 3886, effective March 12, 2010; amended at 34 Ill. Reg. 12891, effective August 19, 2010; amended at 35 Ill. Reg. 4223, effective February 25, 2011; amended at 35 Ill. Reg. 15092, effective August 24, 2011; amended at 36 Ill. Reg. 2363, effective January 25, 2012; amended at 36 Ill. Reg. 9247, effective June 5, 2012; amended at 37 Ill. Reg. 5823, effective April 19, 2013.

SUBPART I: GENERAL RULES OF ALLOCATION AND
APPORTIONMENT OF BASE INCOME

Section 100.3020 Resident (ITA Section 301)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- a) General definition. The term "resident" is defined in IITA Section 1501(a)(20) to mean:
- 1) an individual who is in Illinois for other than a temporary or transitory purpose during the taxable year or who is domiciled in Illinois but is absent from Illinois for a temporary or transitory purpose during the taxable year;
 - 2) the estate of a decedent who, at his or her death, was domiciled in Illinois;
 - 3) a trust created by the will of a decedent who, at his or her death, was domiciled in Illinois; and
 - 4) an irrevocable trust, the grantor of which was domiciled in Illinois at the time ~~the~~ trust became irrevocable. For the purpose of this subsection (a)(4) subparagraph, a trust is considered irrevocable to the extent that the grantor is not treated as the owner of the trust thereof under 26 USC 671 through 678.
- b) Individuals. The purpose of the general definition is to include in the category of individuals who are taxable on their entire net income, regardless of whether derived from sources within or without Illinois, and all individuals who are physically present in Illinois enjoying the benefit of its government, except those individuals who are here temporarily, and to exclude from this category- all individuals, who, although domiciled in Illinois, are outside Illinois for other than temporary and transitory purposes; and, hence, do not obtain the benefit of Illinois government. If an individual acquires the status of a resident by virtue of being physically present in Illinois for other than temporary or transitory purposes, he or she remains a resident even though temporarily absent from Illinois. If, however, he or she leaves Illinois for other than temporary or transitory purposes, he or she ~~thereupon~~ ceases to be a resident. If an individual is domiciled in Illinois, he or she remains a resident unless he or she is outside Illinois for other than temporary or transitory purposes.
- c) Temporary or transitory purposes. Whether or not the purpose for which an individual is in Illinois will be considered temporary or transitory in character will depend upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through Illinois on his or her way to another state, or is here for a brief rest or vacation; or to complete a

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

particular transaction, ~~or~~ perform a particular contract, or fulfill a particular engagement ~~that, which~~ will require his or her presence in Illinois for but a short period, he or she is in Illinois for temporary or transitory purposes; and will not be a resident by virtue of his or her presence here. If, however, an individual is in Illinois to improve his or her health and his or her illness is of such a character as to require a relatively long or indefinite period to recuperate, or he or she is here for business purposes ~~that, which~~ will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to Illinois with no definite intention of leaving shortly thereafter, he or she is in Illinois for other than temporary or transitory purposes; and, accordingly, is a resident taxable upon his or her entire net income even though he or she may also maintain an abode in some other state.

- 1) EXAMPLE Example 1. X is domiciled in Fairbanks, Alaska, where he had lived for 50 years and had accumulated a large fortune. For medical reasons, X moves to Illinois where he now spends his entire time, except for yearly summer trips of about three or four months duration to Fairbanks. X maintains an abode in Illinois and still maintains, and occupies on visits there, his old abode in Fairbanks. Notwithstanding his abode in Fairbanks, because his yearly sojourn in Illinois is not temporary or transitory, he is a resident of Illinois; and is taxable on his entire net income.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Illinois is the state of original domicile and Alaska is the state in which the person is present for the indicated periods and purposes, X is not a resident of Illinois within the meaning of the law, because he is absent from Illinois for other than temporary or transitory purposes.

- 2) EXAMPLE Example 2. Until the summer of 1969, Y admitted domicile in Illinois. At that time, however, to avoid the Illinois income tax, Y declared himself to be domiciled in Nevada, where he had a summer home. Y moved his bank accounts to banks in Nevada; and each year thereafter spent about three or four months in Nevada. He continued to spend six or seven months of each year at his estate in Illinois, which he continued to maintain, and continued his social club and business connections in Illinois. The months not spent in Nevada or Illinois he spent traveling in other states. Y is a resident of Illinois and is taxable on his entire net income, for his sojourns in Illinois are not for temporary or transitory

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Nevada is the state of his original domicile, and the state in which the person is present for the indicated periods and purposes, Y is not a resident of Illinois within the meaning of the law because he is absent from Illinois for other than temporary or transitory purposes.

- 3) ~~EXAMPLE~~ Example 3. B and C, husband and wife, domiciled in Minnesota where they maintain their family home, come to Illinois each November and stay here until the middle of March. Originally they rented an apartment or house for the duration of their stay here but three years ago they purchased a house here. The house is either rented or put in the charge of a caretaker from March to November. B has retired from active control of his Minnesota business but still keeps office space and nominal authority in it. He belongs to clubs in Minnesota, but to none in Illinois. He has no business interests in Illinois. C has little social life in Illinois, more in Minnesota, and has no relatives in Illinois. Neither B nor C is a resident of Illinois. The connection of each to Minnesota, the state of domicile, in each year is closer than it is to Illinois. Their presence here is for temporary or transitory purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Illinois is the state of domicile and B and C are visitors to Minnesota, B and C are residents of Illinois.

- d) Domicile. Domicile has been defined as the place where an individual has his or her true, fixed, permanent home and principal establishment, the place to which he or she intends to return whenever ~~he is absent~~. It is the place in which an individual has voluntarily fixed the habitation of himself or herself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce adoption of him to adopt some other permanent home. Another definition of "domicile" consistent with ~~this the above~~ is the place where an individual has fixed his or her habitation and has a permanent residence without any present intention of permanently moving ~~removing therefrom~~. An individual can at any one time have but one domicile. If an individual has acquired a domicile at one place, he or she retains that domicile until he or she acquires another elsewhere. Thus, if an individual, who has acquired a domicile in California, for example, comes to

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

Illinois for a rest or vacation or on business or for some other purpose, but intends either to return to California or to go elsewhere as soon as his or her purpose in Illinois is achieved, he or she retains his domicile in California and does not acquire a domicile in Illinois. Likewise, an individual who is domiciled in Illinois and who leaves the State retains his Illinois domicile as long as he or she has the definite intention of returning to Illinois. On the other hand, an individual domiciled in California who comes to Illinois with the intention of remaining indefinitely and with no fixed intention of returning to California loses his or her California domicile and acquires an Illinois domicile the moment he or she enters the State. Similarly, an individual domiciled in Illinois loses his Illinois domicile:

- 1) by locating elsewhere with the intention of establishing the new location as his or her domicile; and
 - 2) by abandoning any intention of returning to Illinois.
- e) Minors. The domicile of a minor is ordinarily the same as the domicile of his or her parents or guardians. If the father is deceased, the domicile of a minor is ordinarily the same as the domicile of the his mother and vice versa. In either case, if the minor's parents are divorced, the domicile of the minor is the same as the domicile of the parent having custody.
- f) Presumption of residence. The following create rebuttable presumptions of residence. These presumptions are not conclusive and may be overcome by clear and convincing evidence to the contrary. If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois. These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary.
- 1) An individual receiving a homestead exemption (see 35 ILCS 200/15-175) for Illinois property is presumed to be a resident of Illinois.
 - 2) An individual who is an Illinois resident in one year is presumed to be a resident in the following year if he or she is present in Illinois more days than he or she is present in any other state.
- g) Proof of residence or nonresidence

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- 1) The type and amount of proof that will be required in all cases to establish residency or nonresidency or to rebut or overcome a presumption of residence or nonresidence cannot be specified by a general regulation, but will depend largely on the circumstances of each particular case. The taxpayer may submit any relevant evidence to the Department for its consideration. The Such evidence may include, but is not limited to, affidavits and; evidence of: location of spouse and dependents; voter registration; automobile registration or driver's license; registration; filing an income tax return as a resident of another state; home ownership or rental agreements; the permanent or temporary nature of work assignments in a state; location of professional licenses; location of medical professionals, other healthcare providers, accountants and attorneys; club and/or organizational memberships and participation; and telephone and/or other utility usage over a duration of time. In appropriate instances, the Department may request any relevant evidence that ~~which~~ may assist it in determining the taxpayer's place of residence.
- 2) The location of any corporation, foundation, organization or institution that is exempt from taxation under IRC section 503(c)(3) to which the taxpayer makes financial contributions, gifts, bequests, donations or pledges in any amount qualifying for a deduction as an IRC section 170(a) charitable contribution or as an IRC section 2055(a) bequest, legacy, devise or transfer is not evidence used to establish domicile or nondomicile, or residence or nonresidence, in any state.
- 32) If an individual is presumed under this Section to be a resident for any taxable year, he or she should file a return for that year even though he or she believes he or she was a nonresident who, as such, would not incur an Illinois income tax liability because he or she would have no income allocable or apportionable to Illinois. The Such a return will enable the individual to avoid the possible imposition of penalties for failure to file under IITA Section 1001 should it later be determined that he or she was a resident for the taxable year. The return should be marked as a nonresident return, though Schedule NR is not required. The return should exhibit the computation of net income as though the individual were a resident. The line on the return provided for entering the tax liability should have the following notation: "No liability – nonresident.". The return should be accompanied by a signed statement indicating which presumption of

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

residence the individual was subject to and setting forth in detail the reasons why the individual believes he or she was a nonresident for the taxable year. The return should also be accompanied by any evidence, such as certificates or affidavits, that the individual is able to obtain showing that he or she was a nonresident for the taxable year. If the Department is not satisfied that the individual was a nonresident, it will so inform the individual and provide him or her with an opportunity to submit additional information supporting his or her contention. If the individual fails to submit additional information, or if the additional information submitted does not, when considered with the information appended to the return, overcome the presumption that the individual was a resident for the taxable year, the Department will issue a notice of deficiency asserting a liability against the individual on the following basis:

- A) that the individual is a resident for the taxable year;³ and
- B) that the individual's net income for the taxable year is:
 - i) the amount reflected, with appropriate mathematical error adjustments under IITA Section 903(a)(1), on the return filed by the individual under this subsection (g)(~~32~~)(B)(i); or
 - ii) whatever other amount the Department has determined by an examination under IITA Section 904.

- ⁴³) An individual who, for any taxable year, believes himself or herself to be a nonresident, but who is presumed to be a resident under this Section, may file his return (including a Schedule NR) as a nonresident if, as a nonresident, he or she incurs an Illinois income tax liability due to income allocated or apportioned to Illinois as a nonresident. However, the return should be accompanied by a signed statement indicating which presumption of residence the individual is subject to and setting forth in detail the reasons why the individual believes he or she was a nonresident for the taxable year. The return should also be accompanied by any evidence, such as certificates or affidavits, that the individual is able to obtain showing that he or she was a nonresident for the taxable year. If the Department is not satisfied that the individual was a nonresident, it will so

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

inform the individual and provide him or her with an opportunity to submit additional information supporting his or her contention. If the individual fails to submit additional information, or if the additional information submitted does not, when considered with the information appended to the return, overcome the presumption that the individual was a resident for the taxable year, the Department will issue a notice of deficiency asserting a liability against the individual on the following basis:

- A) that the individual was a resident for the taxable year;
- B) that the individual's net income for the taxable year is:
 - i) his or her entire base income, as reflected on ~~the~~his return with appropriate mathematical error adjustments under IITA Section 903(a)(1), less the appropriate standard exemption prescribed by IITA Section 204; or
 - ii) his or her entire base income, as determined by the Department in an examination under IITA Section 904, less the appropriate standard exemption prescribed by IITA Section 204.
- h) Military personnel. Under 50 USC App. ~~571~~574, members of the U.S. Armed Forces (and commissioned officers of the U.S. Public Health Service) will not cease to be domiciled in Illinois solely by reason of their assignment to duty in other states for long periods. ~~Domiciliaries; domiciliaries~~ of other states will not become Illinois residents under the Act solely by reason of their presence in Illinois under military orders.
- i) Resident: Legal Definition: Usage. The term "resident" is defined differently for different purposes. For example, an individual may be a "resident" for Illinois income tax purposes but not a "resident" eligible to vote (~~see IITA~~see Section 15-1501(a)(20) of the IITA with Sections 3-1 through 3-4 of the Election Code [10 ILCS 5/3-1 through 3-4]). Similarly, a person may be a resident of Illinois for Illinois income tax purposes; and also a resident of another state for purposes of that state's income tax law (~~see IITA~~see Section 15-1501(a)(20) of the IITA with Ky. Rev. Stat. Ann. Section 141.010(17) Wis. Stats., ch. 71, sec. 71.01(1)).

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

(Source: Amended at 37 Ill. Reg. 5823, effective April 19, 2013)