

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

JOHN AND MAUREEN OSBORNE)	
v.)	15-TT-104
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
Department)	

ANSWER TO PETITION

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Taxpayer’s Petition respectfully pleads as follows:

1. Petitioners are individuals, John C. Osborne and Maureen Osborne, with legal address currently at 1046 Franklin Avenue, River Forest, Illinois 60305, and home phone number (708) 771-6043.

ANSWER: The Department admits the statements contained in Paragraph 1.

2. A copy of the Notice of Claim Denial dated March 23, 2015 for the tax year ending December 31, 2010 is attached as Exhibit A.

ANSWER: The Department admits the statements contained in Paragraph 2.

3. A copy of the Notice of Claim Denial dated March 24, 2015 for the tax year ending December 31, 2011 is attached as Exhibit B.

ANSWER: The Department admits the statements contained in Paragraph 3.

JURISDICTION

4. Pursuant to 35 ILCS 1010/1-45(a), the Illinois Independent Tax Tribunal has “original jurisdiction over all determinations of the Department reflected on a ... Notice of Claim Denial ... issued under the Illinois Income Tax Act” where the aggregate amount at issue exceeds \$15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45(a)

ANSWER: The Department admits the statements contained in Paragraph 4.

5. The deficiencies, as determined by the Department, are as follows:

Tax Year Ending	Tax Amount at Issue	Type of Tax
12/31/2010	\$60,863	Income
12/31/2011	\$21,416	Income
TOTAL	\$82,279	

ANSWER: The Department denies the statements contained in Paragraph 5. The Department's Notices reflect an amount owed for tax year 2010 of \$56,723.41 and an overpayment of \$37 for tax year 2011. Paragraph 5 purports to show the difference between the amount of refund claimed on the Petitioner's amended returns and the amount tax assessed on the Department's Notices.

6. The entire amount of the deficiency, penalties, and statutory interest thereon are in dispute.

ANSWER: Pursuant to the statement contained in Paragraph 6, the Department admits that it is the contention of the Petitioner that the stated items are in dispute.

7. The aggregate tax at issue is **\$82,279**. Therefore, the Illinois Independent Tax Tribunal has original jurisdiction in this case.

ANSWER: The Department denies the Petitioner's statement in Paragraph 7 as to the amount of tax involved in this matter. The Department admits that the Tribunal has jurisdiction over this matter.

TIMELINESS

8. The due date for filing this Petition based on the dates of the Notice of Claim Denial in both years at issue is **May 22, 2015**.

ANSWER: The Department admits the statement contained in Paragraph 8.

ERRORS OF FACT OR LAW MADE BY THE DEPARTMENT

9. The determination of taxes and penalties set forth in the Notice of Claim Denial for the tax year ending December 31, 2010 is based upon the following errors:

- A. The Department erroneously decreased Petitioners' Credit for Income Tax Paid to Another State While an Illinois Resident for the period ending December 31, 2010 from \$61,347 to \$484.

ANSWER: The Department admits the statements contained in Paragraph 9(A) with respect to the reduction of the credit from \$61,347 to \$484. The Department denies the statement contained in Paragraph 9(A) with respect to the reduction being erroneous.

- B. The Department erroneously determined that Petitioner is subject to a penalty for the period ending December 31, 2010 in the amount of \$4,755.30.

ANSWER: The Department admits the statement contained in Paragraph 9(B) with respect to \$4,755.30 being assessed in penalties. The Department denies the statement contained in Paragraph 9(B) with respect to the assessment of penalties being erroneous.

10. The determination of taxes and penalties set forth in the Notice of Claim Denial for the tax year ending December 31, 2011 is based upon the following errors:

- A. The Department erroneously decreased Petitioners' Credit for Income Tax Paid to Another State While an Illinois Resident for the period ending December 31, 2011 from \$56,979 to \$35,563.

ANSWER: The Department admits the statement contained in Paragraph 10(A) with respect to the reduction of the credit from \$56,979 to \$35,563. The Department denies the statement contained in Paragraph 10(A) with respect to the reduction being erroneous.

- B. The Department erroneously determined that Petitioners are subject to a penalty for the period ending December 31, 2010 in the amount of \$1,282.40.

ANSWER: The Department admits the statement contained in Paragraph 9(B) with respect to \$1,282.40 being assessed in penalties. The Department denies the statement contained in Paragraph 10(B) with respect to the assessment of penalties being erroneous.

FACTUAL BACKGROUND

11. The facts upon which Petitioners rely as the basis of their case are as follows:

- A. During both years at issue, Petitioners were residents of Illinois.

ANSWER: The Department admits the statements contained in Paragraph 11(A).

- B. Petitioner wife began working for Bank One in April 2001.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statement contained in Paragraph 11(B).

- C. Bank One merged with J.P. Morgan Chase in 2004 and Petitioner wife continued to work for J.P. Morgan from 2004 until 2010.

ANSWER: See Department's Answer to Paragraph 11(B).

D. In January 2010, Petitioner wife was notified that her role was being terminated. Her last day at J.P. Morgan Chase was March 31, 2010.

ANSWER: See Department's Answer to Paragraph 11(B).

E. During 2010, Petitioner wife worked in New York for six (6) days.

ANSWER: See Department's Answer to Paragraph 11(B).

F. During 2010, Petitioner wife worked only for J.P. Morgan Chase and only in Illinois and New York.

ANSWER: See Department's Answer to Paragraph 11(B).

G. During 2010, Petitioner wife received a Form W-2 showing total taxable wages in the amount of \$3,921,878.94, which was made up of long-term incentive plan dividends, restricted stock payments, stock option exercise, bonus award, final vacation pay, regular base pay, and other compensation.

ANSWER: See Department's Answer to Paragraph 11(B).

H. During 2010, Petitioner wife's wages were allocated between New York and Illinois.

ANSWER: See Department's Answer to Paragraph 11(B).

I. In March 2011, Petitioner wife began working at Ernst & Young. Petitioner wife is still employed with Ernst & Young.

ANSWER: See Department's Answer to Paragraph 11(B).

J. During 2011, Petitioner wife received four Forms W-2: (1) from JPMORGAN CHASE BK NA NQ PL AGENT A/C; (2) JPMORGAN CHASE BANK; (3) Bankruptcy Estate of: MARCHFIRST, INC., et. al; and (4) ERNST & YOUNG US LLP.

ANSWER: See Department's Answer to Paragraph 11(B).

K. During 2011, Petitioner wife worked in Illinois, New York, New Jersey, and other non-taxable jurisdictions (e.g., Florida, abroad).

ANSWER: See Department's Answer to Paragraph 11(B).

L. During 2011, Petitioner wife's wages were allocated between New York, New Jersey, and Illinois.

ANSWER: See Department's Answer to Paragraph 11(B).

M. Petitioners received notification that their New York individual income tax returns were being examined for the tax periods ending December 31, 2010 and December 31, 2011.

ANSWER: See Department's Answer to Paragraph 11(B).

N. Petitioners filed protective claims in Illinois for the periods ending December 31, 2010 and December 31, 2011.

ANSWER: The Department admits the statement contained in Paragraph 11(N) with respect to tax year 2010 but denies the statement contained in Paragraph 11(N) with respect to tax year 2011.

O. As a result of the examination, Petitioners paid additional taxes to New York State.

ANSWER: See Department's Answer to Paragraph 11(B).

P. As a result of the additional taxes paid to New York, Petitioners filed amended returns in Illinois to reflect the additional taxes paid to other states. Petitioners claimed additional refunds on both amended returns.

ANSWER: See Department's Answer to Paragraph 11(B). The Department admits that the Petitioner's 2010 and 2011 amended Illinois returns reflect refund claims.

RETURNS FILED

12. Petitioners timely filed Form IL-1040 for the calendar year ending December 31, 2010. Petitioners have copies of the return which can be produced upon request but which has not been attached pursuant to the Tribunal's rules.

ANSWER: The Department admits the statements contained in Paragraph 12.

13. Following a New York State examination, Petitioners timely filed Form IL-1040-X for the calendar year ending December 31, 2010.

ANSWER: The Department admits the statement contained in Paragraph 13.

14. Petitioners timely filed Form IL-1040 for the calendar year ending December 31, 2011. Petitioners have copies of the return which can be produced upon request but which has not been attached pursuant to the Tribunal's rules.

ANSWER: The Department admits that the Taxpayer timely filed form IL-1040 for tax year 2011.

15. Following a New York State audit, Petitioners timely filed Form IL-1040-X for the calendar year ending December 31, 2011.

ANSWER: The Department admits the statements contained in Paragraph 15.

COUNT ONE
ASSERTION THAT PETITIONERS ARE NOT ENTITLED TO CREDIT FOR TAXES
PAID TO OTHER STATES

16. Pursuant to 35 ILCS 5/601(a)(3) (the “Statute”), Illinois residents may be entitled to a credit for income taxes paid to other states (the “Credit”).

ANSWER: The Department admits the statement contained in Paragraph 16, assuming the taxpayer meets the conditions set forth in the statute.

17. Pursuant to the language in the Statute for the years at issue, the amount of the Credit is subject to a limitation. 35 ILCS 5/601(a)(3). Determining the limitation requires the taxpayer to determine what income would be sourced to Illinois if all states used the apportionment rules contained in Article 3 of the Illinois Income Tax Act, 35 ILCS 5/.

ANSWER: The Department admits the statement contained in Paragraph 17.

18. Article 3 of the Illinois Income Tax Act is the “Allocation and Apportionment of Base Income.”

ANSWER: The Department admits the statement contained in Paragraph 18.

19. Respondent’s Notice of Claim Denial indicates that “if your job required you to work in more than one state, your compensation is considered paid in Illinois if your base of operations was in Illinois.” This argument refers to 35 ILCS 5/304(a)(2)(B)(i)-(iii) of the statute which determines when “[c]ompensation is paid in this state...”

ANSWER: The Department admits the statements contained in Paragraph 19 with respect to tax year 2010. The Department denies the statement contained in Paragraph 19 as it pertains to tax year 2011.

20. Section 304 speaks to “Business income of persons other than residents.” However, based on the argument made in Respondent’s Notice of Claim Denial, Respondent’s argument is that the reference to “Article 3” is in fact a reference to 35 ILCS 5/304(a)(2)(B)(i)-(iii).

ANSWER: Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

21. 35 ILCS 5/304(a)(2)(B) states in part:

Compensation is paid in this state if:

(i) The individual’s service is performed entirely within this State;

(ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or

(iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

ANSWER: The Department admits that the partial statute cited is correctly cited. The partial statute speaks for itself.

22. These provisions apply to taxpayers who are not "professional athletes." A different set of rules apply to professional athletes. 35 ILCS 5/304(a)(2)(B)(iv).

ANSWER: Paragraph 22 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The cited statute speaks for itself.

23. Based on the statute, Respondent argues that Petitioner's Credit for both years should be decreased.

ANSWER: The Department denies the statement contained in Paragraph 23. No specific statute is cited.

24. The Statute relied on by Respondent violates the United States Constitution. Comptroller of the Treasury of Maryland v. Wynne et ux, 575 U.S. ____ (2015).

ANSWER: The Department denies the statement contained in Paragraph 24.

25. On May 18, 2015, the United States Supreme Court handed down a decision in Comptroller of the Treasury of Maryland v. Wynne et ux, Id. The Court in Wynne was asked to determine the constitutionality of an "unusual" Maryland tax statute that "[did] not offer its residents a full credit against the income taxes that they pay to other States." Id. at p.1 (all references throughout are to electronic PDF of Court's opinion). The Court determined that "this feature of the State's tax scheme violates the Federal Constitution" based on the dormant Commerce Clause. Id. at 1-2. The dormant Commerce Clause "precludes States from 'discriminat[ing] between transactions on the basis of some interstate element.'" Id. at 5-6.

ANSWER: Paragraph 25 contains a legal conclusion, not a material statement of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

26. The Illinois statute at issue results in the double taxation of some Illinois residents who work in more than one state. Therefore, the statute creates a difference between Illinois taxpayers who work interstate versus intrastate.

ANSWER: Paragraph 26 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Further, the Department denies the legal conclusion contained in Paragraph 26.

27. The Court in Wynne used the four-part “internal consistency” test established in Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977). This test “helps courts identify tax schemes that discriminate against interstate commerce ... [and] [b]y hypothetically assuming that every State has the same tax structure, the internal consistency test allows courts to isolate the effect of a defendant State’s tax scheme.” Wynne at 3-4.

ANSWER: Paragraph 27 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

28. The internal consistency test “asks whether a ‘tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.’” Id. The Court found that Maryland’s “income tax scheme” failed the internal consistency test because it “is inherently discriminatory and operates as a tariff.” Id. at 22.

ANSWER: Paragraph 28 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

29. The Illinois statute is also “inherently discriminatory” in the way it taxes taxpayers who work interstate. Taxpayers who work only in Illinois are subject to tax only in Illinois; taxpayers who work in Illinois and State X may be subject to tax in Illinois (with no Credit given) and to tax in State X.

ANSWER: Paragraph 29 contains a legal conclusion, not a material statement of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Further, the Department denies the legal conclusion contained in Paragraph 29.

30. The Court in Wynne offered a solution for the deficiency in Maryland’s law: “To be sure, Maryland could remedy the infirmity in its tax scheme by offering, as most States do, a credit against income taxes paid to other States. ... If it did, Maryland’s tax scheme would survive the internal consistency test and would not be inherently discriminatory.” Id. at 25.

ANSWER: Paragraph 30 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

31. The Statute imposes different methods for determining the limitation on the credit based on the year at issue. In the past (and for years ending prior to December 31, 2009), as the Court in Wynne suggested above, Illinois did give a credit for taxes paid to other states. The credit was not limited by the “base of operations” test in Article 3 of the Illinois Income Tax Act, but was limited by the ratio of the “taxpayer’s base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year.” 35 ILCS 5/301(b)(3).

ANSWER: Paragraph 31 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Further, to the extent the cited statute is relevant to this matter, the cited statute speaks for itself.

32. During 2010, some of Petitioner wife's wages were taxable in two places: Illinois and New York. Petitioners paid income tax on the compensation that was subject to tax in two states. Therefore, they are entitled to a credit for taxes paid to other states as calculated on the amended return.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 32 as they relate to whether the "Petitioner's wife's wages" were taxed in two states. The Department denies the statement contained in Paragraph 32 as it relates to the Petitioner's entitlement to a credit for taxes paid to other states.

33. During 2011, some of Petitioner wife's wages were taxable in three places: Illinois, New York, and New Jersey. Petitioners paid income tax on the compensation that was subject to tax in two states. Therefore, they are entitled to a credit for taxes paid to other states as calculated on the amended return.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 33 as they relate to whether the "Petitioner wife's wages" were taxed in three states. The Department denies the statement contained in Paragraph 33 as it relates to the Petitioner's entitlement to a credit for taxes paid to other states.

COUNT TWO
ASSERTION OF PETITIONERS' LIABILITY FOR PENALTIES

34. Petitioners timely filed all income tax returns required to be filed. Therefore, no failure to timely file penalties should be assessed.

ANSWER: The Department admits the Taxpayers timely filed all Illinois income tax returns relevant to this case. The Department denies that a penalty was assessed against the Taxpayers' 2010 and 2011 returns for failure to timely file a return.

35. Petitioners timely filed paid all income taxes for which they are liable. Therefore, no failure to pay penalties should be assessed.

ANSWER: The Department denies the statement contained in Paragraph 35. For tax year 2010, the Taxpayers' were assessed a penalty for failure to pay based on the disallowed amount of credit for taxes paid to other states relating to their original 2010 Illinois income tax return. For tax year 2011, the Taxpayers were assessed an under estimated payment penalty against their Illinois tax return.

WHEREFORE, the Department prays that the Tribunal enter an Order that:

- a. denies the Petitioner's prayer for relief;
- b. finds the Notice of Claim Denial for tax years 2010 and 2011 are correct as issued;
- c. orders judgment in favor of the Department and against the Petitioner; and
- d. grants any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

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