ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

EDMUND J. SWEENEY,	)	
	)	
Petitioner,	)	
	)	Case No. 16-TT-6
v.	)	
	)	Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,	)	Administrative Law Judge
	)	
Respondent.	)	

DEPARTMENT'S ANSWER AND AFFIRMATIVE DEFENSES TO PETITIONER'S FIRST AMENDED PETITION

NOW COMES the Illinois Department of Revenue ("Department"), through its attorney, Lisa Madigan, Illinois Attorney General, by Jonathan Pope, Special Assistant Attorney General, and for its Answer to the Petition of Edmund J. Sweeney ("Petitioner") respectfully pleads as follows:

Jurisdictional Statement

1. The Illinois Tax Tribunal has original jurisdiction over this matter pursuant to 35 ILCS 1010/1-45 (2013). Petitioner was issued a Notice of Claim Denial for the tax years 2005, 2006, and 2007 by the Illinois Department of Revenue (hereinafter "IDOR") on November 12, 2015. A copy of the Notice of Claim Denials for 2005, 2006, and 2007 are incorporated by reference and attached hereto as **Exhibits A, B, and C**, respectively.

ANSWER: Petitioner's assertion that the Tribunal has jurisdiction over this matter is a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation ("Rule") 310(b)(2) (86 Ill. Admin. Code § 5000.310). The Department admits that it issued Petitioner a Notice of Claim Denial for

each of the tax years 2005, 2006, and 2007 (the "Years at Issue") on or about November 12, 2015 (collectively, the "Notices").

2. The aggregate amount at issue for the tax years or audit period at issue exceeds $15,000, exclusive of penalties and interest.

ANSWER: The Department admits that the tax liability evidenced in the Notices for the Years at Issue exceeds $15,000, exclusive of penalties and interest.

Factual Background

3. On May 15, 2006, Mr. Sweeney received a letter from the IDOR informing him his residency status was being examined for the tax years 2002-2004. The letter stated that the basis for the IDOR's action was to determine whether he continued to be domiciled in the State of Illinois.

ANSWER: Based on knowledge, information, and belief after a reasonable inquiry, the Department admits the allegations in Paragraph 3. However, to the extent Petitioner alleges that an audit examination for the 2002, 2003, or 2004 tax years is relevant to or dispositive in any way with respect to the Years at Issue or audit track A1131501568 ("Audit at Issue"), which is the basis of the Notices, the Department denies such allegations in Paragraph 3.

4. On June 6, 2006, Mr. Sweeney responded to the IDOR's correspondence by providing documentation he had abandoned his Illinois domicile in February 2002 and had established his domicile in Florida.

ANSWER: The term "documentation" is vague and ambiguous; the Department therefore denies any allegations in Paragraph 4 related thereto. To the extent Petitioner alleges that the 2002 tax year is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 4.

5. On June 12, 2006, six days after receiving the information from Mr. Sweeney, the IDOR issued a Notice of Proposed Deficiency indicating that additional tax liability was due for the tax years 2002-2004.

ANSWER: Based on knowledge, information, and belief after a reasonable inquiry, the Department admits the allegations in Paragraph 5. However, to the extent Petitioner alleges that an audit result for the 2002, 2003, or 2004 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 5.

6. Enclosed with the Notice of Proposed Deficiency was the auditor's report, prepared by Rae Ann Weldin, an Auditor with the IDOR. The Report stated that "[b]ased upon our review of all information **we are changing your filings for tax years 2002 thru 2004 . . . since you have never given up your residence at 1002 N. Crosby** we have determined that you are indeed an Illinois resident and therefore responsible for reporting all income to Illinois for tax purposes."

ANSWER: The Department admits a Notice of Proposed Deficiency with accompanying Auditor's Report was issued to Taxpayer for the 2002, 2003, and 2004 tax years, and states that each document speaks for itself. However, to the extent Petitioner alleges that an audit result for the 2002, 2003, or 2004 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 6.

7. On August 1, 2006, Mr. Sweeney responded to the IDOR's June 12, 2006 correspondence. Mr. Sweeney explained the proposed Deficiency was erroneous because **the 1002 North Crosby property was not build until 2004**. He also enclosed a copy of the lease

for the North Crosby property and other documents to substantiate his claim. Thus, Mr. Sweeney noted the factual basis for the IDOR's conclusion was not only erroneous it was, in fact, impossible.

ANSWER: Based on knowledge, information, and belief after a reasonable inquiry, the Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 7 and demands strict proof thereof. To the extent Petitioner alleges that an audit result for the 2002, 2003, or 2004 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 7.

8. On November 20, 2006, three months after Mr. Sweeney responded to the IDOR's Notice of Proposed Deficiency, the IDOR issued Mr. Sweeney a refund for his 2003 taxes. The IDOR correspondence stated the IDOR had reviewed the information Mr. Sweeney provided and "changed the account to show the return as you requested."

ANSWER: The Department admits it issued Petitioner a refund for his 2003 taxes and states that the "IDOR correspondence" speaks for itself. To the extent Petitioner alleges that a refund for the 2003 tax year is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 8.

9. In late February 2007, over three months after the IDOR had issued him a refund, Mr. Sweeney received a notice that an Informal Conference Board (hereinafter "ICB") hearing was scheduled for May 15, 2007. At the ICB hearing, the IDOR informed Mr. Sweeney for the first time that the refund had been issued in error. However, the IDOR representative at the ICB hearing was unable to explain why the error had occurred or why the IDOR was recanting its prior conclusion

ANSWER: The ICB file, to whatever extent it may exist, remains with the ICB and neither becomes part of the audit file nor does the Department's litigator have access to said file. *See* 86 Ill. Admin. Code § 215.120(a). The Department therefore lacks sufficient knowledge to either admit or deny the allegations in Paragraph 9 and demands strict proof thereof. To the extent Petitioner alleges that an ICB discussion or result for the 2002, 2003, or 2004 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 9.

10. On December 21, 2007, upon completion of the audit, the IDOR issued Mr. Sweeney a Notice of Deficiency (hereinafter "NOD") in the amount of $88,862 for the tax years 2002-2003.

ANSWER: The Department admits the allegations in Paragraph 10. However, to the extent Petitioner alleges that a notice of deficiency for the 2002 or 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue, the Department denies such allegations in Paragraph 10.

11. The basis for the NOD was the IDOR's determination that Mr. Sweeney was a resident of Illinois for the 2002 and 2003 tax years.

ANSWER: The Department admits the allegations in Paragraph 11. However, to the extent Petitioner alleges that a notice of deficiency for the 2002 or 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue, the Department denies such allegations in Paragraph 11.

12. Mr. Sweeney timely protested the NOD and requested a hearing before the Illinois Department of Revenue, Office of Administrative Hearings.

ANSWER: The Department admits the allegations in Paragraph 12. However, to the extent Petitioner alleges that a notice of deficiency for the 2002 or 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue, the Department denies such allegations in Paragraph 12.

13. The IDOR and Mr. Sweeney each proffered testimony and documentary evidence at a hearing, which commenced on June 26, 2009, before Administrative Law Judge Julie-April Montgomery.

ANSWER: The Department admits the allegations in Paragraph 13. However, to the extent Petitioner alleges that an administrative hearing result for the 2002, 2003, and 2004 tax years is relevant to or dispositive in any way with respect to the Years at Issue, the Department denies such allegations in Paragraph 13.

14. In July 2009, prior to a ruling by Administrative Law Judge, the IDOR issued Mr. Sweeney a proposed Notice of Deficiency for the tax years 2005, 2006, and 2007.

ANSWER: The Department admits that on or about July 19, 2009 it issued Petitioner EDA-24 Auditor's Reports for the Years at Issue. The Department admits that the ALJ in Docket No. 08-IT-0012 issued her Recommendation of Disposition on February 25, 2010. The Department denies all other allegations in Paragraph 14.

15. Thereafter, as a result of discussions between Mr. Sweeney and the IDOR, the IDOR agreed to stay any determination for these years pending a decision in the administrative hearing for tax years 2002 - 2003.

ANSWER: The phrase "discussions between Mr. Sweeney and the IDOR" is vague and ambiguous; the Department therefore denies all allegations in Paragraph 15 related thereto. The Department admits that on December 12, 2009 Petitioner and the Department executed

Form IL-872, Consent to Extend the Time to Assess or Refund Income Tax, to extend the statute of limitations period for the 2005 and 2006 tax years such that "a claim for refund for [2005 and 2006] may be filed at any time within six months after [October 15, 2010]." The Department denies all other allegations in Paragraph 15.

16. The IDOR acknowledged that if Mr. Sweeney prevailed with his argument that he had abandoned his Illinois residency in 2002, it would not pursue any claims for tax years 2005 – 2007.

ANSWER: The term "IDOR acknowledged" is vague and ambiguous; the Department therefore denies all allegations in Paragraph 16 related thereto. Moreover, the Department denies that the 2002 tax year and related audit have any relevance to or dispositive affect upon the Years at Issue or the Audit at Issue.

17. The fact that the IDOR agreed to stay the audit for tax years 2005 through 2007 is evidence that the Department acknowledged that the decision for 2002 and 2003 was dispositive for the question of residency in 2005 and 2007.

ANSWER: The Department denies the allegations in Paragraph 17.

18. The IDOR's argument that a Taxpayer must abandon all connections to a state in order to abandon domicile in that state set such a high standard that the IDOR knew it would not be able to establish that Mr. Sweeney abandoned his Florida domicile in 2005, 2006, and 2007. Mr. Sweeney established he had abandoned his Illinois domicile in 2002 and 2003 and the burden therefor shifted to the IDOR to prove he reestablished his Illinois domicile thereafter.

ANSWER: The Department denies the allegations in Paragraph 18.

19. On February 25, 2010, eight months after the conclusion of the hearing, the Administrative Law Judge issued a Recommendation for Disposition in which she concluded Mr. Sweeney never effectively abandoned his Illinois domicile in February 2002.

ANSWER: The Department admits that the ALJ in Docket No. 08-IT-0012 issued her Recommendation of Disposition on February 25, 2010 and states that said Recommendation speaks for itself. The Department denies all other allegations in Paragraph 19.

20. Immediately thereafter, the IDOR began pursuing Mr. Sweeney for the tax years of 2005, 2006 and 2007. Included within the claims were substantial penalties and interest totaling in excess of $375,000.

ANSWER: The phrase "began pursuing" is vague and ambiguous; the Department therefore denies all allegations in Paragraph 20 related thereto. The Department admits that the ALJ in Docket No. 08-IT-0012 issued her Recommendation of Disposition on February 25, 2010, regarding the 2002 and 2003 tax years, for audit track A1120686720. The Department admits that prior to said Recommendation, on or about April 30, 2009, the Department issued Petitioner a Notice of Audit Initiation for the Years at Issue, audit track A583815808. The Department denies all other allegations in Paragraph 20.

21. Thereafter, on March 24, 2010, Mr. Sweeney filed a Complaint for Administrative Review in the Circuit Court of Cook County, Illinois. *See, Sweeney v. State of Illinois Department of Revenue, et al.*, 10 L 50524 (Cir. Court Cook Cnty.).

ANSWER: The Department admits the allegations in Paragraph 21.

22. In the Fall of 2010, while his Complaint for Administrative Review was pending in the Circuit Court, Mr. Sweeney was informed by the IDOR that it was going to seek payment for tax deficiencies for 2005, 2006 and 2007, including substantial penalties.

ANSWER: The phrases "in the Fall of 2010," "Mr. Sweeney was informed by the IDOR," and "seek payment" are vague and ambiguous; the Department therefore denies all allegations in Paragraph 22 related thereto.

23. In November 2010, Mr. Sweeney engaged in extensive discussions with the IDOR over these alleged deficiencies. The IDOR recommended that Mr. Sweeney avail himself of the tax Amnesty Program offered by the State to pay the claimed deficiency of $314,911 for tax years 2005-2007, which would avoid liabilities for penalties and interest approaching $75,000 and accruing daily on a going-forward basis.

ANSWER: The phrases "engaged in extensive discussions with the IDOR" and "The IDOR recommended" are vague and ambiguous; the Department therefore denies all allegations in Paragraph 23 related thereto. The Department admits that Ms. Weldin confirmed to Petitioner that participating in the Amnesty Program pursuant to 86 Ill. Admin. Code §§ 520.101 and 520.105 ("Amnesty Program"), would avoid any penalty and interest on the underlying tax liabilities for the Years at Issue, audit track A583815808. The Department denies all other allegations in Paragraph 23.

24. On or about November 1, 2011, Mr. Sweeney sent a letter to Rae Anne Weldin informing her that he was making a payment of the proposed deficiency, but he continued to contest the liability and he expected the money to be returned if the Circuit Court ruled in the administrative review proceeding that he was not an Illinois resident or the IDOR concluded its audit in his favor.

ANSWER: The Department admits that Rae Ann Weldin received from Petitioner a letter dated November 1, 2011, and states that said letter speaks for itself. The Department denies all other allegations related thereto in Paragraph 24. Moreover, to the extent Petitioner

implies that the contents of said letter imposed conditions upon Petitioner's participation in the Amnesty Program, the Department denies such allegations.

25. The IDOR claimed that if Mr. Sweeney did not avail himself of this opportunity, his penalties and interest would increase and, in fact, could be doubled.

ANSWER: The Department admits that Rae Anne Weldin correctly informed Petitioner of the penalty and interest increases imposed by the Amnesty Program and states that the Amnesty Program speaks for itself.

26. After receiving assurance from Rae Ann Weldin, the IDOR Auditor assigned to the matter, that he would receive a refund for this payment for tax years 2005 – 2007 if the Circuit Court ruled in the Mr. Sweeney's favor reversing the IDOR's finding for the previous tax years, Mr. Sweeney paid the IDOR $314,911.00 for the proposed deficiency for tax years 2005 through 2007.

ANSWER: The Department admits that Petitioner chose to participate in the Amnesty Program and, on or about November 1, 2010, paid the Department $8,075 for the 2005 tax year, $111,186 for the 2006 tax year, and $185,660 for the 2007 tax year, or $304,921 in the aggregate for the Years at Issue. The Department denies all other allegations in Paragraph 26.

27. Section 520.105(f)(2) of the Amnesty Program Regulations provides "[p]rior to the issuance of an amended return or waiver of restrictions on assessment after the conclusion of an audit, a taxpayer may participate in the Amnesty Program by reporting the amount of Eligible Liability that it estimates will result from the audit on an original or amended return, and paying that amount during the Amnesty Program Period, The IDOR will continue with the audit (including any proceedings before the Informal Conference Board) in the same manner as if no

amnesty payment had been made, except that the interest and penalties related to the amnesty payment will be abated. Ill. Admin. Code tit. 86, § 520.105.

ANSWER: The Department admits that Petitioner has accurately reproduced 86 Ill. Admin. Code § 520.105(f)(2). The Department denies all other allegations related thereto in Paragraph 27.

28. On April 14, 2011, the Circuit Court of Cook County remanded the case back to the Office of Administrative Hearing, in part, because the Administrative Law Judge had wrongfully excluded exhibits from the administrative trial for the period of 2005 – 2007.

ANSWER: The Department admits the allegations in Paragraph 28. However, to the extent Petitioner alleges that the Circuit Court case for the 2002 and 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 28.

29. The subsequent years of 2005 through 2007 were effectively incorporated in the hearing and subsequent court action. Both in the administrative trial and in the administrative review proceeding evidence from 2005 through 2007 was admitted and considered by the respective judges. The IDOR's case hinged on Mr. Sweeney's renting an Illinois home in from December 2004 through May 2006.

ANSWER: The Department denies the allegations in Paragraph 29.

30. As of April 15, 2011 the IDOR did not complete an audit for tax years 2005-2007 nor did it assess any additional tax liability to the Taxpayer.

ANSWER: The Department admits that because Petitioner chose to participate in the Amnesty Program and paid the proposed tax, thereby satisfying the underlying tax liability, the

Department did not close out the audit for 2005-2007 nor assess any additional tax liability to Taxpayer for said years prior to April 15, 2011.

31. On June 15, 2011, the Administrative Law Judge issued an administrative decision on remand recommending the notice of deficiency be finalized with respect to the tax years 2002 and 2003. In her opinion following remand, the administrative law judge admitted that by 2006 Mr. Sweeney effectively abandoned his Illinois domicile.

ANSWER: The Department admits that Administrative Law Judge Julie-April Montgomery entered on June 15, 2011 her Order Pursuant to Remand from Circuit Court. The Department further admits that Judge Montgomery recommended that the notices be finalized for the 2002 and 2003 tax years. The Department denies Petitioner's erroneous reading of the June 15, 2011 recommendation with respect to abandoning Illinois domicile and denies all allegations related thereto in Paragraph 31.

32. On July 28, 2011, Mr. Sweeney was granted leave to amend the complaint in the Circuit Court to include the June 15, 2011 administrative decision on remand.

ANSWER: The Department admits the allegations in Paragraph 32. However, to the extent Petitioner alleges that the Circuit Court case for the 2002 and 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 32.

33. On or around September 21, 2011, the IDOR informed Mr. Sweeney that it was closing the audit, but it did not assess any liability or specify any amounts that were owed or would be withheld from Mr. Sweeney.

ANSWER: The Department denies the allegations in Paragraph 33.

34. The IDOR did not inform Mr. Sweeney that it would not be repaying the funds paid under the Amnesty Program. However, based on his communications, the IDOR was aware Mr. Sweeney was expecting the funds to be repaid.

ANSWER: The Department admits that it had no obligation to, and therefore did not, inform Mr. Sweeney that it would not "repay" funds paid under the Amnesty Program, as the Amnesty Program does not permit such an outcome. Petitioner's expectation is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). However, to the extent an answer is required, the Department denies the legitimacy of Mr. Sweeney's expectation and denies all allegations related thereto in Paragraph 34.

35. Throughout 2011, Mr. Sweeney had the understanding based on the IDOR's representations that it would repay the moneys Mr. Sweeney deposited under the Amnesty Act if Mr. Sweeney prevailed in the administrative review proceeding.

ANSWER: Petitioner's "understanding" is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). However, to the extent an answer is required, the Department denies the accuracy of Mr. Sweeney's "understanding" and denies all allegations related thereto in Paragraph 35. Lastly, the phrase "IDOR's representations" is vague and ambiguous; the Department therefore denies all allegations related thereto in Paragraph 35.

36. If the IDOR did not agree to return the funds to Mr. Sweeney, contingent upon the Circuit Court's decision, then the IDOR should have returned the funds to Mr. Sweeney once it did not assess the liability by April 15, 2011.

ANSWER: The Department admits that it neither agreed nor was permitted to return any funds to Mr. Sweeney paid under the Amnesty Program. The Department denies that it

should have "returned the funds" to Mr. Sweeney as the Amnesty Program does permit this result. The Department denies all other allegations in Paragraph 36.

37. The IDOR's subsequent position that there was no agreement to extend the Statute of Limitations would lead to the conclusion that the Statute of Limitations for repaying Mr. Sweeney to amount previously paid lapsed on April 15, 2011 and the IDOR should have returned the funds paid under the proposed liability.

ANSWER: Paragraph 37 in its entirety is vague and ambiguous and ultimately calls for a legal conclusion; the Department therefore denies the allegations in Paragraph 37.

38. Mr. Sweeney contested the proposed liability when he made the payment. He did not amend his tax returns and he informed the IDOR that he expected to be repaid if he prevailed in Court or during the audit process.

ANSWER: The Department denies that a taxpayer, including Petitioner, can legally contest a proposed liability resulting from a Department audit while simultaneously paying the proposed liability. The Department denies that Petitioner "did not amend his tax returns" as Petitioner submitted an IL-1040-X, Amended Individual Income Tax Return, on December 30, 2013 for the Years at Issue. The Department denies all remaining allegations in Paragraph 38.

39. Instead, the IDOR in violation of the Amnesty Act did not continue the audit "in the same manner as if no amnesty payment had been made."

ANSWER: Paragraph 39 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Paragraph 39 purports to cite a statute but does not provide a citation; the Department is unable to locate the mysterious language and therefore denies the allegations in Paragraph 39.

40. The IDOR closed the audit in September 2011 and did not assess any liability. Nor did the IDOR inform Mr. Sweeney that it would not be returning the funds.

ANSWER: The Department admits that because Petitioner chose to participate in the Amnesty Program and paid the proposed tax, thereby satisfying the underlying tax liability, the Department did not assess any additional tax liability to Taxpayer for the Years at Issue. The Department further admits that it did not inform Mr. Sweeney that "it would not be returning the funds" as such result was neither expected nor permitted pursuant to the Amnesty Program.

41. In fact, Mr. Sweeney believed the condition precedent to return of the funds would be a finding in the administrative review proceeding that he was not an Illinois resident, since the IDOR had previously agreed it would only return the funds if he prevailed in the administrative review proceeding. The agreement was simple: if Mr. Sweeney prevailed in the administrative review proceeding, he would get his funds back; if the Circuit Court ruled against him, then he would not be repaid.

ANSWER: Petitioner's belief is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). However, to the extent an answer is required, the Department denies the accuracy of Mr. Sweeney's belief and denies all allegations related thereto in Paragraph 41. Moreover, the Department denies that the existence of a "condition precedent" or "agreement" as referred to in Paragraph 41 as such red herrings are clearly inconsistent with participation in the Amnesty Program.

42. The direction Mr. Sweeney received from the IDOR was that he did not need to do anything at that point in September 2011.

ANSWER: The allegation in Paragraph 42 is vague and ambiguous for numerous reasons; the Department therefore denies all allegations in Paragraph 42.

43. On June 26, 2013, after repeated delays and requests for extension by the IDOR, the Honorable Patrick J. Sherlock ruled the Administrative Law Judge's finding that Mr. Sweeney was domiciled in Illinois during 2002 – 2003 was against the manifest weight of the evidence and clearly erroneous. Judge Sherlock entered and Order reversing the IDOR's decision. *See*, **Exhibit D**, June 26, 2013Opinion and Order.

ANSWER: The Department admits that Judge Sherlock entered his Order on June 26, 2013, and that said Order speaks for itself. The Department denies all other allegations in Paragraph 43. Moreover, to the extent Petitioner alleges that a Circuit Court decision for the 2002 or 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 43.

44. The Court ruled that Mr. Sweeney had abandoned his Illinois domicile in 2002. The Circuit Court found "there is no evidence [Mr. Sweeney] maintained any residence in Illinois. Indeed, the State's assertions that he resided at the Crosby address was plainly incorrect. Crosby was not built until 2004 and was never Sweeney's address during the 2002 and 2003 period." *Id.* at p.21.

ANSWER: The Department admits that Judge Sherlock entered his Order on June 26, 2013, and that said Order speaks for itself. The Department denies all other allegations in Paragraph 44. Moreover, to the extent Petitioner alleges that a Circuit Court decision for the 2002 or 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 44.

45. The Court also held that Mr. Sweeney did not reestablish his Illinois residency by renting the North Crosby address in 2005-2006, a period that coincided with the conclusion of his employment responsibilities. The Court rejected the IDOR's argument that by leasing the

North Crosby residence it evidenced Mr. Sweeney never intended to abandon his Illinois domicile in for tax years 2002-2003.

ANSWER: The Department admits that Judge Sherlock entered his Order on June 26, 2013, and that said Order speaks for itself. The Department denies that the Circuit Court opinion was intended to apply to anything other than the 2002 and 2003 tax years. *See* Petitioner's Exhibit D, p. 6, fn 1 (". . . this case focuses solely on tax years 2002 and 2003."). The Department denies all other allegations in Paragraph 45. Moreover, to the extent Petitioner alleges that a Circuit Court decision for the 2002 or 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 45.

46. The IDOR's assertion that Mr. Sweeney's renting of the North Crosby address in 2005 through the end of his contract with TD in May 2006 allegedly evidenced his intent to not abandon his Illinois residence in 2002 and 2003, put the tax years 2005-2007 at issue in the administrative trial and the administrative review proceeding.

ANSWER: The Department denies the allegations in Paragraph 46.

47. Subsequently, in the fall of 2013, Mr. Sweeney and his accountant contacted the IDOR about effectuating the return of the funds paid under the Amnesty Act.

ANSWER: The phrases "in the fall of 2013" and "contacted the IDOR" are vague and ambiguous; the Department therefore denies all allegations related thereto in Paragraph 47.

48. The IDOR was confused as to how to effectuate the return of the refunds.

ANSWER: The allegation in Paragraph 48 is vague and ambiguous; the Department therefore denies all allegations related thereto in Paragraph 48.

49. In December 2013, Mr. Sweeney requested a repayment for the taxes paid for tax years 2005 – 2007, since the Court had ruled he had not been a resident since 2002 and the State was not entitled to those sums.

ANSWER: The phrase "requested a repayment" is vague and ambiguous; the Department therefore denies all allegations related thereto in Paragraph 49. If the term "repayment" is intended to mean "refund," the Department admits that Petitioner submitted an IL-1040-X, Amended Individual Income Tax Return, on December 30, 2013 for the Years at Issue. The Department denies that the Circuit Court opinion was intended to apply to anything other than the 2002 and 2003 tax years. *See* Petitioner's Exhibit D, p. 6, fn 1 (". . . this case focuses solely on tax years 2002 and 2003."). The Department denies all other allegations in Paragraph 49. Moreover, to the extent Petitioner alleges that a Circuit Court decision for the 2002 or 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 49.

50. In December 2013, the IDOR reopened the audit for tax years 2005-2007. In August 2014, the IDOR denied the audit claiming that the funds were precluded from being refunded because they were an established liability paid under the Amnesty Act.

ANSWER: The Department denies the allegation "[i]n December 2013, [it] reopened the audit for the tax years 2005-2007." The Department admits that on or about August 12, 2014, Rae Ann Weldin issued Petitioner a Notice of Proposed Claim Denial with respect to Petitioner's refund claims submitted for the Years at Issue. The Department denies all other allegations in Paragraph 50.

51. In September 2014, Mr. Sweeney sent a letter to the IDOR informing them that his payment was not an established liability and should be repaid.

ANSWER: Based on knowledge, information, and belief after a reasonable inquiry, the Department denies the allegations in Paragraph 51.

52. In February 2015, Mr. Sweeney and his attorney attended an ICB Hearing where the IDOR agreed that the payments were not precluded from being repaid because there was never an established liability.

ANSWER: The ICB file, to whatever extent it may exist, remains with the ICB and neither becomes part of the audit file nor does the Department's litigator have access to said file. *See* 86 Ill. Admin. Code § 215.120(a). The Department therefore lacks sufficient knowledge to either admit or deny the allegations in Paragraph 52 and demands strict proof thereof.

53. However, at the ICB Hearing, the IDOR took the position that the Statute of Limitations had lapsed.

ANSWER: The ICB file, to whatever extent it may exist, remains with the ICB and neither becomes part of the audit file nor does the Department's litigator have access to said file. *See* 86 Ill. Admin. Code § 215.120(a). The Department therefore lacks sufficient knowledge to either admit or deny the allegations in Paragraph 53 and demands strict proof thereof.

54. There is no statutory period or limitation that prohibits the IDOR from returning the funds paid by Mr. Sweeney. The IDOR can make refunds at its discretion for any past overpayments no matter how many years have passed.

ANSWER: Paragraph 54 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 54.

55. On November 12, 2015, the IDOR issued a Notice of Claim Denial for the requested refund of the payments made by Mr. Sweeney for the tax years 2005 – 2007. The

IDOR denied Mr. Sweeney's claim in full because he did not file an amended return within the required time period. The explanation of adjustments provided by the IDOR stated that if Mr. Sweeney claimed a change decreased his Illinois tax liability and wanted a refund, he had to file an amended return within three years from the date of the return (including extensions); three years after the date the date his original return was filed; or one year after the date his Illinois tax was paid; whichever is latest.

ANSWER: The Department admits that it issued Petitioner the Notices at issue and that each notice speaks for itself. The Department denies all other allegations in Paragraph 55.

56. Mr. Sweeney had never claimed a change decreased his Illinois Tax Liability, nor did he file an amended return.

ANSWER: The Department denies the allegations in Paragraph 56.

57. Mr. Sweeney had contested the proposed additional liability in 2010. He never stopped contesting it. The IDOR at all times knew Mr. Sweeney contested this liability and that both his tax returns and his letters effectively requested repayment of the funds paid during the Amnesty period; the IDOR was on notice that there was an overpayments based on Mr. Sweeney's timely filed original return, his subsequent written communications that Mr. Sweeney viewed the payments made under the Amnesty Act as overpayments and expected them to be returned if he prevailed in the Illinois Action or if the IDOR did not assess an additional liability.

ANSWER: The Department denies the allegations in Paragraph 57.

58. The IDOR never informed Mr. Sweeney that it assessed the additional liability.

ANSWER: The Department admits that because Petitioner chose to participate in the Amnesty Program and paid the proposed tax, thereby satisfying the underlying tax liability, the

Department did not close out the audit for 2005-2007 nor assess any additional tax liability to Taxpayer for said years.

59. The first time the IDOR informed Mr. Sweeney he would not receive repayment was in August 2014. Under Title 86 Section 100.9410 C (2) Mr. Sweeney's time for filing a claim for refund would have been 6 month from the date the IDOR notified him that no refund would be allowed. Thus, Mr. Sweeney had until February 2016 to file a claim for refund.

ANSWER: Paragraph 59 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 59.

60. Petitioner does not need to request a refund since he had contested the liability and the IDOR was under a duty to return the overpayment either when the Circuit Court ruled in Mr. Sweeney's favor or the IDOR did not assess any additional liability within the statutory period.

ANSWER: Paragraph 60 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 60. Moreover, to the extent Petitioner alleges that the Circuit Court case for the 2002 and 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 60.

COUNT I

61. Petitioner incorporates by reference his allegations from the prior and subsequent paragraphs of this Petition and the allegation of this paragraph.

ANSWER: The Department incorporates and repeats its Answers to Paragraphs 1 through 60, as if fully set forth herein.

62. Rae Ann Weldin, acting within the scope of her employment as an Auditor for the IDOR, entered into an oral agreement that provided if Mr. Sweeney paid the disputed amount of tax liability for 2005-2007 under the Amnesty Program, Mr. Sweeney could obtain a refund of the amounts paid if the Circuit Court ruled Mr. Sweeney was not an Illinois resident in the Administrative Review proceeding.

ANSWER: The Department admits that Ms. Weldin was at all relevant times, and continues to be, employed by the Department as an Auditor. The Department denies all other allegations in Paragraph 62.

63. Mr. Sweeney complied with the terms of the agreement by paying the disputed tax liability for 2005-2007.

ANSWER: The Department admits that Petitioner chose to participate in the Amnesty Program and paid the Department on or about November 1, 2010, $8,075 for the 2005 tax year, $111,186 for the 2006 tax year, and $185,660 for the 2007 tax year, or $304,921 in the aggregate for the Years at Issue. The Department denies all other allegations in Paragraph 63.

64. The IDOR has breached the agreement by refusing to repay Mr. Sweeney the amounts he overpaid during the Amnesty Program.

ANSWER: The Department denies the allegations in Paragraph 64.

65. As a direct and proximate results of the IDOR's breach of the agreement, Mr. Sweeney has suffered damages in the amount of $314,911.

ANSWER: Paragraph 65 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 65.

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

a. denying each prayer for relief in the Petitioner's Petition;

b. finding that the Notices of Claim Denial are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

d. granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

66. Petitioner incorporates by reference his allegations from the prior and subsequent paragraphs of this Petition as the allegation of this paragraph.

ANSWER: The Department incorporates and repeats its Answers to Paragraphs 1 through 65, as if fully set forth herein.

67. Rae Ann Weldin and other members of the IDOR misrepresented to Mr. Sweeney that if he paid the amount allegedly due for the tax periods 2005-2007 under the tax Amnesty Program, the IDOR would pay back these sums if it was ultimately ruled he was not an Illinois resident.

ANSWER: The Department denies the allegations in Paragraph 67.

68. At the time Ms. Weldin made these statements, she was acting within the scope of her employment as an employee of the IDOR.

ANSWER: The Department admits that Ms. Weldin was at all relevant times, and continues to be, a Department employee. The Department denies all other allegations in Paragraph 68.

69. At the time Ms. Weldin made these statements, she either knew or should have known they were not true.

ANSWER: The Department denies the allegations in Paragraph 69.

70. At the time these statements were made to Mr. Sweeney and at the time Mr. Sweeney tendered payment of the amount allegedly due for 2005-2007, he did not know or have reason to know the statements by Ms. Weldin were false.

ANSWER: The Department denies the allegations in Paragraph 70.

71. At the time Ms. Weldin made the statements to Mr. Sweeney, she intended and reasonably expected Mr. Sweeney would act upon the representations by paying the disputed amounts for 2005-2007.

ANSWER: The Department denies the allegations in Paragraph 71.

72. Mr. Sweeney relied upon Ms. Weldon's statements in good faith and paid the disputed amount of tax liability for 2005-2007, which was detrimental to Mr. Sweeny in that it resulted in pecuniary loss to Mr. Sweeney.

ANSWER: The Department admits that Petitioner chose to participate in the Amnesty Program and paid the Department on or about November 1, 2010, $8,075 for the 2005 tax year, $111,186 for the 2006 tax year, and $185,660 for the 2007 tax year, or $304,921 in the aggregate for the Years at Issue. The Department denies all other allegations in Paragraph 72.

73. Mr. Sweeney has been and will be prejudiced by his reliance on the statement made by Ms. Weldin if the IDOR is permitted to deny the terms of the agreement reached between Ms. Weldin and Mr. Sweeney.

ANSWER: The Department denies the allegations in Paragraph 73.

74. In November 2010, the IDOR was auditing Petitioner for tax years 2005-2007.

ANSWER: The Department admits the allegation in Paragraph 74.

75. Petitioner and IDOR had executed Form IL 872 which had extended the time for the IDOR to assess an additional liability until April 15, 2011.

ANSWER: The Department denies the allegation in Paragraph 75.

76. The proposed liability constituted an "eligible liability" under the Amnesty Program Regulations. 86 Ill.Admn.Code 520.105.

ANSWER: The Department admits the allegation in Paragraph 76.

77. The proposed liability does not constitute an "established liability" under the Amnesty Program Regulations. 86 Ill.Admn.Code 520.105.

ANSWER: The Department admits the allegation in Paragraph 77.

78. Any payment by the Petitioner was to be repaid if the IDOR did not assess an additional liability by April 15, 2011.

ANSWER: The phrase "any payment by the Petitioner" is vague and ambiguous; the Department therefore denies all allegations related thereto in Paragraph 78. To the extent Petitioner is referring to the payment made under the Amnesty Program, the Department denies all allegations related thereto in Paragraph 78.

79. Petitioner made payments of the proposed deficiency on or around November 1, 2010.

ANSWER: The Department admits that Petitioner chose to participate in the Amnesty Program and, on or about November 1, 2010, paid the Department $8,075 for the 2005 tax year, $111,186 for the 2006 tax year, and $185,660 for the 2007 tax year, or $304,921 in the aggregate for the Years at Issue. The Department denies all other allegations in Paragraph 79.

80. Petitioner did not amend his tax returns and continued to contest the proposed liability.

ANSWER: The Department denies the allegations in Paragraph 80.

81. On or about November 1, 2010, Petitioner sent a letter to IDOR stating he continued to contest the proposed liability, he anticipated the audit to continue, and if Petitioner prevailed in the administrative review proceeding or the audit did not assess and additional liability, the Petitioner requested that IDOR to refund the payment.

ANSWER: The Department admits that Rae Ann Weldin received from Petitioner a letter dated November 1, 2011, and states that said letter speaks for itself. The Department denies all other allegations related thereto in Paragraph 81. Moreover, to the extent Petitioner implies that the contents of said letter imposed conditions upon Petitioner's participation in the Amnesty Program, the Department denies such allegations.

82. The IDOR did not assess an additional liability by April 15, 2011. In fact, the IDOR never assessed a specific additional liability.

ANSWER: The Department admits that because Petitioner chose to participate in the Amnesty Program and paid the proposed tax, thereby satisfying the underlying tax liability, the Department did not assess any additional tax liability to Taxpayer for the Years at Issue. The Department denies all other allegations in Paragraph 82.

83. Under the Amnesty Act, when a payment is made, the IDOR is to continue the audit as if not payment was made under the Amnesty Program.

ANSWER: Paragraph 83 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 83.

84. The IDOR did not continue the audit as if no payment had been made.

ANSWER: Paragraph 84 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 84.

85. The IDOR had previously represented to Petitioner that it would refund the money if he prevailed in his Illinois Court action.

ANSWER: The Department denies the allegation in Paragraph 85.

86. The first time the IDOR informed the Petitioner that it would not refund the overpayment was in August 2014.

ANSWER: The Department denies the allegation in Paragraph 86.

87. Any Statute of Limitations would have been six months after Petitioner was informed he would not be repaid the overpayment consistent with his original timely filed tax return.

ANSWER: Paragraph 87 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 87.

88. Since the IDOR argues there was no agreement to extend the Statute of Limitations for refunding Mr. Sweeney, the IDOR was obligated to repay Mr. Sweeney the

amount previously paid by April 15, 2011, and the IDOR was affirmatively obligated to return the overpayment to Mr. Sweeney.

ANSWER: Paragraph 88 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 88.

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

a. denying each prayer for relief in the Petitioner's Petition;

b. finding that the Notices of Claim Denial are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

d. granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT III

89. Petitioner incorporates by reference his allegations from the prior and subsequent paragraphs of this Petition as the allegation of this paragraph.

ANSWER: The Department incorporates and repeats its Answers to Paragraphs 1 through 88, as if fully set forth herein.

90. The IDOR has been unjustly enriched by Mr. Sweeney's payment of the disputed tax liability for 2005 – 2007 because it was ruled as a matter of law that Mr. Sweeney was *not* an Illinois resident beginning in 2002.

ANSWER: Paragraph 90 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 90. Moreover, to the extent Petitioner alleges that an administrative hearing result or circuit court result for the 2002, 2003,

or 2004 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 90.

91. Mr. Sweeney has been impoverished by the IDOR's refusal to return the payments made by Mr. Sweeney for the disputed tax liability for 2005 – 2007.

ANSWER: The Department denies the allegations in Paragraph 91.

92. There is a direct and proximate relationship between the IDOR's unjust enrichment and Mr. Sweeney's impoverishment since Mr. Sweeney paid the money to the IDOR and the IDOR now refuses to refund the money even though it was ruled Mr. Sweeney was not an Illinois resident beginning in 2002 and did not reestablish his domicile in Illinois in 2005 – 2007.

ANSWER: Paragraph 92 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 92. Moreover, to the extent Petitioner alleges that a Circuit Court Order for the 2002 and 2003 tax years is relevant to or dispositive in any way with respect to the Years at Issue or the Audit at Issue, the Department denies such allegations in Paragraph 92.

93. There is no justification for the IDOR's refusal to refund the payments made by Mr. Sweeney for the disputed tax liability for 2005-2007 because there has been a judicial determination that Mr. Sweeney was not an Illinois domiciliary beginning in 2002 and that he did not reestablish his domicile in Illinois during 2005-2007.

ANSWER: The Department denies the allegations in Paragraph 93.

94. In the alternative to the allegations of Count I, there is no adequate remedy at law for Mr. Sweeney to obtain repayment of the disputed tax liability for 2005-2007.

ANSWER: Given that Petitioner paid his tax liabilities for the Years at Issue under the Amnesty Program, such that Petitioner may not at any point seek a refund of said payments, the Department admits that the Amnesty Program gave Petitioner the benefit of avoiding $71,052 in penalties and 200% interest, which upon acceptance constituted a remedy available for the Years at Issue. Additionally, and independently, given that the statute of limitations period for seeking a refund for the Years at Issue has long lapsed, the Department admits that there are no available remedies at law that would permit Petitioner a refund for the Years at Issue. The Department denies that Petitioner is entitled to any remedy in law or equity to obtain repayment of the disputed tax liability for 2005-2007.

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

a. denying each prayer for relief in the Petitioner's Petition;

b. finding that the Notices of Claim Denial are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

d. granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT IV

95. Petitioner incorporates by reference his allegations from the prior and subsequent paragraphs of this Petition as the allegation of this paragraph.

ANSWER: The Department incorporates and repeats its Answers to Paragraphs 1 through 95, as if fully set forth herein.

96. Rae Ann Weldin and other members of the IDOR misrepresented to Mr. Sweeney that if he paid the amount allegedly due for the tax periods 2005-2007, the IDOR would pay back these sums if it was ultimately ruled that he was not an Illinois resident.

ANSWER: The Department denies the allegations in Paragraph 96.

97. At the time Ms. Weldin made these statements, she was acting within the scope of her employment as an employee of the IDOR.

ANSWER: The Department admits that Ms. Weldin was at all relevant times, and continues to be, a Department employee. The Department denies all other allegations in Paragraph 97.

98. At the time Ms. Weldin made these statements, she either knew or should have known they were not true.

ANSWER: The Department denies the allegations in Paragraph 98.

99. Ms. Weldin made these statements with intent of inducing Mr. Sweeney to pay the amount of the disputed tax liability for 2005-2007.

ANSWER: The Department denies the allegations in Paragraph 99.

100. Mr. Sweeney reasonably relied upon the truth of Ms. Weldin's statements. Mr. Sweeney was not a tax professional and Ms. Weldin was an Auditor for the IDOR.

ANSWER: The Department admits that Ms. Weldin was at all relevant times, and continues to be, a Department Auditor. The Department lacks sufficient knowledge to either admit or deny whether Petitioner could be considered "a tax professional" and demands strict proof thereof. The Department denies all other allegations in Paragraph 100.

101. As a direct and proximate result of Mr. Sweeney relying on the fraudulent statements of Ms. Weldin, Mr. Sweeney suffered damages by paying Sweeney the amount of $314,911 to the IDOR.

ANSWER: Paragraph 101 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 101.

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

a. denying each prayer for relief in the Petitioner's Petition;

b. finding that the Notices of Claim Denial are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

d. granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT V

102. Petitioner incorporates by reference his allegations from the prior and subsequent paragraphs of this Petition as the allegation of this paragraph.

ANSWER: The Department incorporates and repeats its Answers to Paragraphs 1 through 101, as if fully set forth herein.

103. In October 2010, Petitioner had discussions with Rae Ann Weldin, who is an employee and auditor for the IDOR.

ANSWER: The Department admits that Ms. Weldin was at all relevant times, and continues to be, a Department Auditor. The phrase "had discussions" is vague and ambiguous, the Department therefore denies all allegations related thereto in Paragraph 103.

104. In October 2010, one of Petitioner's attorneys, Patrick Sutton, also had discussions with Rae Weldin.

ANSWER: The phrase "had discussions" is vague and ambiguous, the Department therefore denies all allegations related thereto in Paragraph 104.

105. Rae Ann Weldin represented that the IDOR proposed additional liability of the Petitioner for tax years 2005-2007 was an eligible liability under the Amnesty Tax Act.

ANSWER: The Department admits that the 2005-2007 tax liability was an eligible liability under the Amnesty Program.

106. Ms. Weldin informed petitioner that if he did not avail himself of the Amnesty Program, the Petitioner could ultimately be subject to increased penalties for any further established liability for years 2005-2007.

ANSWER: The Department admits that Rae Anne Weldin correctly informed Petitioner of the imposition of an increased penalty imposed by the Amnesty Program and states that the Amnesty Program speaks for itself. The Department denies all other allegations related thereto in Paragraph 106.

107. At all material times, Ms. Weldin had a duty to communicate accurate information to Mr. Sweeney and his agents.

ANSWER: Paragraph 107 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the phrase "accurate information" is vague and ambiguous; the Department therefore denies any allegations in Paragraph 107 related thereto. Additionally, the Department admits that Rae Anne Weldin correctly informed Petitioner of the imposition of an increased penalty and interest imposed by the Amnesty Program and states that the Amnesty Program speaks for itself.

108. Rae Ann Weldin misrepresented to Mr. Sweeney that if he paid the amount the IDOR proposed as a deficiency the Petitioner potentially owed for the tax periods 2005-2007, that IDOR would pay back these sums if the Petitioner prevailed in his Illinois Court Case with

respect to Illinois residency or if the Department did not assess any additional liability during the audit.

ANSWER: The Department denies the allegations in Paragraph 108.

109. At the time Ms. Weldin made these statements, she was acting within the scope of her employment as an employee of the IDOR.

ANSWER: The Department admits that Ms. Weldin was at all relevant times, and continues to be, a Department Auditor. The Department denies all remaining allegations in Paragraph 109.

110. At the time Ms. Weldin made these statements, she had no reasonable grounds to believe them to be true since Department's policy was to avoid refunds at all costs.

ANSWER: The Department denies the allegations in Paragraph 110.

111. Ms. Weldin made these statements with intent of inducing Mr. Sweeney to pay the amount of the disputed tax liability for 2005-2007.

ANSWER: The Department denies the allegations in Paragraph 111.

112. Mr. Sweeney reasonably relied upon the truth of Ms. Weldin's statements. Mr. Sweeney was not a tax professional and Ms. Weldin was an Auditor for the IDOR.

ANSWER: The Department admits that Ms. Weldin was at all relevant times, and continues to be, a Department Auditor. The Department lacks sufficient knowledge to either admit or deny whether Petitioner could be considered "a tax professional" and demands strict proof thereof. The Department denies all other allegations in Paragraph 112.

113. As a direct and proximate result of Mr. Sweeney relying on the statements of Ms. Weldin, Mr. Sweeny suffered damages by paying the amount of $314,911 to the IDOR.

ANSWER: Paragraph 113 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 113.

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

a. denying each prayer for relief in the Petitioner's Petition;

b. finding that the Notices of Claim Denial are correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

d. granting such further relief as this Tribunal deems appropriate under the circumstances.

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DEPARTMENT'S AFFIRMATIVE DEFENSES

NOW COMES the Illinois Department of Revenue ("Department"), through its attorney, Lisa Madigan, Illinois Attorney General, by Jonathan Pope, Special Assistant Attorney General, and for its Affirmative Defenses to the Petition of Edmund J. Sweeney ("Petitioner") respectfully pleads as follows:

BACKGROUND

1. The tax years ending December 31, 2005, December 31, 2006, and December 31, 2007 are at issue in this matter (the "Years at Issue").

2. On or about April 30, 2009, the Department initiated an audit for the Years at Issue, audit track A583815808; the issue was Petitioner's Illinois residency (or non-residency).

3. On or about November 1, 2010, Petitioner chose to participate in a tax amnesty program and paid the Department $8,075 for the 2005 tax year, $111,186 for the 2006 tax year, and $185,660 for the 2007 tax year, or $304,921 in the aggregate for the Years at Issue.

4. Petitioner's participation in the tax amnesty program enabled Petitioner to avoid $71,052 in penalties and 200% interest for the Years at Issue.

5. On December 30, 2013, Petitioner submitted IL-1040-X(s), Amended Individual Income Tax Returns (i.e., refund claims) for the Years at Issue; Petitioner's Illinois residency (or non-residency) was the basis for the refund claims.

6. The Department denied Petitioner's refund claims for the Years at Issue and issued Petitioner Notices of Claim Denial on or about November 12, 2015, audit track A1131501568 (collectively, the "Notices").

7. Petitioner protested the Notices.

8. Pursuant to Tax Tribunal rules, grounds for dismissal may be raised as an affirmative defense in the answer. 86 Ill. Admin. Code §5000.315(g). The Department herein provides two independent grounds for dismissal, which are raised as two affirmative defenses.

9. First, dismissal is proper because the Illinois Tax Delinquency Amnesty Act prohibits a taxpayer from claiming a refund for an overpayment of tax where the overpayment issue is related to the issues for which the taxpayer claimed amnesty pursuant to the Department's Tax Delinquency Amnesty program. 35 ILCS 745/10; 86 Ill. Admin. Code § 520.105(k). Exhibit 1.

10. Second, dismissal is also proper because Section 911 of the Illinois Income Tax Act ("IITA"),[1] prohibits a taxpayer from obtaining a refund of income tax where the taxpayer does not properly submit its refund claim within the statutorily prescribed time. IITA § 911.

AFFIRMATIVE DEFENSE I

Tax Amnesty Program

11. The Department incorporates and repeats its allegations in Paragraphs 1 through 10, as if fully set forth herein.

12. On or about April 30, 2009, the Department issued Petitioner a Notice of Audit Initiation for the Years at Issue, audit track A583815808. As evidenced in the auditor's IL-1040 Auditor's Report, dated July 17, 2009 ("EDA-24"), the auditor determined that Petitioner was an Illinois resident for the Years at Issue. The auditor's determination that Petitioner was an Illinois resident resulted in a tax liability of $304,921, exclusive of penalty and interest, or $375,973, inclusive of penalty and interest, for the Years at Issue. Exhibit 1; *see generally*, Petition.

[1] All references herein to the IITA refer to 35 ILCS 5/101 *et seq*.

13. In 2010, before audit track A583815808 for the Years at Issue was concluded, the Illinois General Assembly amended the Tax Delinquency Act to include an additional amnesty period ("Tax Amnesty Program"). P.A. 96-1435 (eff. August 16, 2010); 35 ILCS 745/10. This amendment provided that, upon payment by a taxpayer of all taxes due for any taxable periods after June 30, 2002 and prior to July 1, 2009, the Department would abate and not seek to collect any interest or penalties and would not seek civil or criminal prosecution of the taxpayer. The additional amnesty period for payment was open from October 1, 2010 through November 15, 2010. Those taxpayers who failed to pay their unpaid tax liabilities within that period would be charged 200% interest.

14. Significantly, by choosing to participate in the Tax Amnesty Program, a taxpayer waived his or her right to a refund for an overpayment of tax on an issue related to the issues for which the taxpayer claimed amnesty ("Amnesty Issue"). *See* 35 ILCS 745/10; 86 Ill. Admin. Code § 520.105(k). Exhibit 1.

15. "An issue is an 'Amnesty Issue' unless it is *unrelated to the issues for which the taxpayer claimed amnesty*." 86 Ill. Admin. Code § 520.105(k) (emphasis in the original). "An Amnesty Issue is therefore every issue of law that must be resolved in determining the amount of an Eligible Liability paid during the Amnesty Program . . . ." *Id.*

16. Petitioner's Illinois residency (or non-residency) was the legal issue that generated the tax liability of $375,973. *See generally*, Petition; *see also*, Exhibit 2.

17. Petitioner chose to participate in the Tax Amnesty Program and, on or about November 1, 2010, paid the Department $8,075 for the 2005 tax year, $111,186 for the 2006 tax year, and $185,660 for the 2007 tax year, or $304,921 in the aggregate for the Years at Issue; these are funds for which Petitioner now seeks a refund. *See, e.g.*, Petition ¶ 21.

18. By choosing to participate in the Tax Amnesty Program, Petitioner received certainty and finality as to the Years at Issue and a substantial benefit of avoiding $71,052 in penalties and 200% interest.

19. Nevertheless, on December 30, 2013, Taxpayer submitted IL-1040-Xs for the Years at Issue (i.e., refund requests). *See* Exhibits 3 – 5; *see generally*, Petition ¶ 30

20. For the 2005 tax year, Petitioner indicated the reason for the refund claim, in its entirety, as follows:

> The taxpayer had made a payment to the Illinois Department of Revenue on November 2, 2010 for the tax years 2005 in the amount of $8,075. The taxpayer made the payments based on the Illinois Department of Revenue EDA-24 report for the tax year 2005, which stated the taxpayer was a resident of Illinois. However, Edmund J. Sweeney v. Illinois Department of Revenue; Brian A Hamer, as Director of the Illinois Department of Revenue, verdict states that the taxpayer was not an Illinois resident for years 2002 and 2003. Mr. Sweeney has not changed his residency status, which is that of Florida, since the year of 2003. The Taxpayer requests a refund of $8,075, due to the above mentioned verdict that he is not an Illinois resident.

Exhibit 3, Petitioner's 2005 IL-1040-X, Statement 1; *see generally*, Petition.

21. Petitioner's IL-1040-X, Statement 1 for the 2006 and 2007 tax years are identical to the 2005 Statement 1, save for the tax year identified and the amount paid. *See* Exhibits 4, 5.

22. Petitioner's explanation quoted in Paragraph 20, *supra*, contained in Petitioner's IL-1040-X, Statement 1s for the Years at Issue, acknowledges that the issue that triggered the tax liabilities for the Years at Issue for which Petitioner now seeks a refund was whether he was an Illinois resident.

23. In other words, Petitioner necessarily acknowledges that Illinois residency was the Amnesty Issue that generated the tax liability that he paid in its entirety under amnesty.

24. In sum, pursuant to the Illinois Tax Delinquency Act and the Department Regulations promulgated to carry out said Act, Petitioner is prohibited from obtaining a refund

of $304,921 of income tax paid under the Tax Amnesty Program for the Years at Issue because Petitioner's Illinois residency is an Amnesty Issue (i.e., related to the issue for which Taxpayer claimed amnesty). 35 ILCS 745/10; 86 Ill. Admin. Code § 520.105(k). Exhibit 1.

WHEREFORE, the Department respectfully requests this Tribunal:

a. find that the issue of Petitioner's residency is an Amnesty Issue;

b. enter judgment in favor of the Department and against Petitioner; and

c. grant such further relief as this Tribunal deems just and proper.

AFFIRMATIVE DEFENSE II

Statute of Limitations

25. The Department incorporates and repeats its allegations in Paragraphs 1 through 24, as if fully set forth herein.

26. A claim for refund "shall be filed not later than 3 years after the date the return was filed . . ., or one year after the date the tax was paid, whichever is the later . . . ." IITA § 911(a)(1).

27. No refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period. IITA § 911(a)(2).

28. "Where, before the expiration of the time prescribed in [Section 911] for the filing of a refund claim, both the Department and the claimant shall have consented in writing to its filing after such time, such claim may be filed at any time prior to the expiration of the period agreed upon." IITA § 911(c). "The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon." *Id.*

29. Participation in the Tax Amnesty Program did not alter the statute of limitations period. The Department's regulations provide in relevant part:

> Participation in *the Amnesty Program does not toll or extend any applicable statute of limitations or other time period for the filing of refund claims*, protests with the Department, *or actions in circuit court* under the Protest Act. The Taxpayers' Bill of Rights does not toll or extend any applicable statute of limitations.

86 Ill. Admin. Code § 520.105(l) (emphasis added). Exhibit 1.

30. "The plain meaning of [IITA] Section 911 is that the taxpayer has an affirmative duty to file for a tax refund within a prescribed period of time." *Dow Chemical Co. v. Department of Revenue*, 224 Ill.App.3d 263, 267 (1st Dist. 1991). "Although it might seem reasonable to judicially toll the statute of limitations in order to fashion a remedy . . . such a decision is not supported by Illinois case law which holds that no exceptions which toll a statute of limitations or enlarge its scope will be implied." *Id*, at 268-69; *Severe v. Miller*, 120 Ill. App. 3d 550, 555 (4th Dist. 1983).

31. Here, as in *Dow Chemical*, Petitioner "did not file a claim for refund as a protective device before the statute of limitations expired on filing such a claim, or at the very least, obtain an extension for filing a claim as provided in section 911[c] of the statute." *Dow Chemical*, 224 Ill. App. 3d at 269.

32. The IITA requires the Department to deny Petitioner's refund claims for each of the Years at Issue.

2005

33. Petitioner's 2005 tax year due date for IL-1040, Individual Income Tax Return, was April 15, 2006. IITA § 505(a)(2). The Department grants an automatic six-month extension of time to file said return. *Id.*

34. Six months after April 15, 2006 was October 15, 2006.

35. Petitioner filed an IL-1040, Individual Income Tax Return, for the 2005 tax year on October 4, 2006.

36. Three years after October 4, 2006, the date the 2005 IL-1040 was filed, was October 4, 2009. However, when determining the statute of limitations for purposes of IITA § 911(a), the return is deemed filed on the last day prescribed.

37. Applying IITA § 911(a)(1), the statute of limitations period for filing a refund claim three years after the date the return was due was **October 15, 2009**.

38. However, IITA § 911(c) permits the parties to agree to extend the time Petitioner may file a refund claim.

39. On December 12, 2009 Petitioner executed Form IL-872, Consent to Extend the Time to Assess or Refund Income Tax, to extend the statute of limitations period such that "a claim for refund for [the Years at Issue] may be filed at any time within six months after [October 15, 2010]." Exhibit 6; see also, Petition ¶ 15.

40. As such, the parties agreed to extend the refund claim deadline to **April 15, 2011**.

41. No additional IL-872 agreements to extend the time to refund income tax were executed.

43. On November 1, 2010, Petitioner paid the Department $8,075, the 2005 tax year tax liability.

44. Applying IITA § 911(a)(1), one year after November 1, 2010, the date the tax was paid, was **November 1, 2011**.

45. Pursuant to IITA § 911, including the IL-872 permitted by § 911(c), the latest date Petitioner was permitted to file a refund claim for the 2005 tax year was **November 1, 2011**.

46. On **December 30, 2013**, Taxpayer submitted an IL-1040-X, Amended Individual Income Tax Return (i.e., a refund claim), for the 2005 tax year. Exhibit 3; *see also*, Petition ¶ 30.

47. December 30, 2013, the date the 2005 IL-1040-X was filed, is later in time than the November 1, 2011 statutory deadline.

48. Pursuant to IITA § 911, no refund shall be allowed or made with respect to the 2005 tax year because the refund claim was not filed within the prescribed period.

49. As such, the Department properly denied Taxpayer's 2005 tax year refund claim.

2006

50. Petitioner's 2006 tax year due date for IL-1040, Individual Income Tax Return, was April 15, 2007. IITA § 505(a)(2). The Department grants an automatic six-month extension of time to file said return. *Id.*

51. Six months after April 15, 2007 was October 15, 2007.

52. Petitioner filed an IL-1040, Individual Income Tax Return, for the 2006 tax year on October 2, 2007.

53. Three years after October 2, 2007, the date the 2006 IL-1040 was filed, was October 2, 2010. However, when determining the statute of limitations for purposes of IITA § 911(a), the return is deemed filed on the last day prescribed.

54. Applying IITA § 911(a)(1), the statute of limitations period for filing a refund claim three years after the date the return was due was **October 15, 2010**.

55. However, IITA § 911(c) permits the parties to agree to extend the time Petitioner may file a refund claim.

56. On December 12, 2009 Petitioner executed Form IL-872, Consent to Extend the Time to Assess or Refund Income Tax, to extend the statute of limitations period such that "a claim for refund for [the Years at Issue] may be filed at any time within six months after [October 15, 2010]." Exhibit 5.

57. As such, the parties agreed to extend the refund claim deadline to **April 15, 2011**.

58. No additional IL-872 agreements to extend the time to refund income tax were executed.

59. On November 1, 2010, Petitioner paid $111,186 the 2006 tax year tax liability.

60. Applying IITA § 911(a)(1), one year after November 1, 2010, the date the tax was paid, was **November 1, 2011**.

61. Pursuant to IITA § 911, including the IL-872 permitted by § 911(c), the latest date Petitioner was permitted to file a refund claim for the 2006 tax year was **November 1, 2011**.

62. On **December 30, 2013**, Taxpayer submitted an IL-1040-X, Amended Individual Income Tax Return (i.e., a refund claim), for the 2006 tax year. Exhibit 4; *see also*, Petition ¶ 30.

63. December 30, 2013, the date the 2006 IL-1040-X was filed, is later in time than the November 1, 2011 statutory deadline.

64. Pursuant to IITA § 911, no refund shall be allowed or made with respect to the 2006 tax year because the refund claim was not filed within the prescribed period.

65. As such, the Department properly denied Taxpayer's 2006 tax year refund claim.

2007

66. Petitioner failed to file an IL-1040, Individual Income Tax Return, for the 2007 tax year.

67. Applying IITA § 911(a)(1), the statute of limitations period for filing a refund claim three years after the date the return was due is therefore inapplicable.

68. IITA § 911(c) permits the parties to agree to extend the time Petitioner may file a refund claim.

69. An IL-872 agreement to extend the time to refund income tax was not executed.

70. On November 1, 2010, Petitioner paid $185,660 the 2007 tax year tax liability.

71. Applying IITA § 911(a)(1), one year after November 1, 2010, the date the tax was paid, was **November 1, 2011**.

72. Pursuant to IITA § 911, the latest date Petitioner was permitted to file a refund claim for the 2007 tax year was **November 1, 2011**.

73. On **December 30, 2013**, Taxpayer submitted an IL-1040-X, Amended Individual Income Tax Return (i.e., a refund claim), for the 2007 tax year. Exhibit 5; *see also*, Petition ¶ 30.

74. December 30, 2013, the date the 2007 IL-1040-X was filed, is later in time than the November 1, 2011 statutory deadline.

75. Pursuant to IITA § 911, no refund shall be allowed or made with respect to the 2007 tax year because the refund claim was not filed within the prescribed period.

76. As such, the Department properly denied Taxpayer's 2007 tax year refund claim.

WHEREFORE, the Department respectfully requests this Tribunal:

a. find and declare that the statute of limitations period for claiming a refund for the Years at Issue had closed prior to the date on which Petitioner submitted his refund claims;

b. find and declare the Notices correct as issued;

c. enter judgment in favor of the Department and against Petitioner; and

d. grant such further relief as this Tribunal deems just and proper.

Respectfully Submitted,

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Attorney for the Department

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