

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>EDMUND J. SWEENEY,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>16 TT 6</b>
	)	<b>Judge Brian F. Barov</b>
<b>ILLINOIS DEPARTMENT</b>	)	
<b>OF REVENUE,</b>	)	
	)	
<b>Respondent.</b>	)	

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**REPLY TO AFFIRMATIVE DEFENSES**

Petitioner EDMUND J. SWEENEY, by and through his attorneys, Senak Keegan Gleason Smith & Michaud, Ltd., as his Reply to the Illinois Department of Revenue’s (hereinafter the “Department”) Affirmative Defenses, states 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”).

**ANSWER:** Admitted.

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).

**ANSWER:** Admitted.

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.

**ANSWER:** Petitioner admits he was induced to participate in Amnesty Program based on assurances that if he prevailed in the pending administrative review proceeding in the Circuit Court of Cook County entitled, *Sweeney v. State of Illinois Department of Revenue, et al.*, 10-L-50524 (Cir. Court Cook Cnty.) (hereinafter the “Administrative Review Proceeding”) he would receive a repayment. Petitioner admits he made payments for an unestablished liability, which should have been returned when the Department did not assess a liability or upon reversal of the administrative law judge’s ruling in the Administrative Review Proceeding. Further answering, under 86 Ill. Admin. Code § 520.105(f)(2), the Department was to proceed with the audit as if no payment was made, which it failed to do. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner denies he was or would have been liable to Department for any tax liability, penalties, or interest for the Years at Issue, since it had been adjudicated that the Petitioner was not an Illinois resident for the tax years 2002 – 2003, and the Department had never sustained its burden of proving he was an Illinois resident for the Years at Issue. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner admits he submitted form IL1040-X, which contained the same information as his original tax returns, indicating he had no liability to the State of Illinois. Further answering, Petitioner’s submission was based on the recommendation of the Department to effectuate the repayment of the funds which he was due after conferring with employees of the Department, who were confused as to how to effectuate the repayment. Further answering, Petitioner has protested any liability from 2009 through present. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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”).

**ANSWER:** Petitioner admits the Department denied his claim for repayment on the basis that Petitioner’s payment in 2010 was for an “established liability.” To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

7. Petitioner protested the Notices.

**ANSWER:** Admitted.

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.

**ANSWER:** Petitioner admits that 86 Ill.Admin.Code § 5000.315 states that “[a] motion to dismiss must be filed before the answer is due or the grounds for dismissal may be raised as an affirmative defense in the answer.” Petitioner denies that the Department has provided two independent grounds for dismissal as its Affirmative Defenses. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Denied. Further answering, Petitioner made payment for an unestablished liability which was still under audit. The Department was obligated, under 86 Ill.Admin.Code § 520.105(f)(2), to proceed with the audit and assess the liability by April 15, 2011 or repay the funds. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

10. Second, dismissal is also proper because Section 911 of the Illinois Income Tax Act

("IITA"), 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.

**ANSWER:** Petitioner denies that he did not request repayment on time. Petitioner protested the estimated liability and paid the estimated liability under Amnesty Act. Further answering, 86 Ill.Admin.Code § 520.105(f)(2) requires the Department to either assess the liability or return the funds. Further answering, at all times Petitioner's tax returns apprised the Department that his position was he overpaid his taxes and his communications indicated he desired repayment if he was successful in the Administrative Review Proceeding or the Department did not assess the liability. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

### **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.

**ANSWER:** Petitioner incorporates by reference his responses to the allegations of Paragraphs 1 through 10 as his response to Paragraph 11.

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.

**ANSWER:** Petitioner admits that on April 30, 2009, the Department issued a notice of audit initiation. Petitioner denies the auditor's IL-1040 Auditor's Report, dated July 17, 2009 ("EDA-24") was a determination that he was an Illinois resident for the years at issue. Further answering, this was a suggested liability that was not established and the audit was ongoing. Further answering, the audit was not closed until September 11, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner admits that 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. Further answering, Petitioner states 86 Ill.Admin.Code § 520.105(f)(2) requires the Department to continue the audit for unestablished liabilities even if a taxpayer makes an estimated payment under the Amnesty Act. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner denies he waived his right to repayment for any payment of an unestablished liability. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.*

**ANSWER:** Petitioner admits that 86 Ill. Admn. Code § 520.105(k)(1) states “[a]n issue is an Amnesty Issue unless it is unrelated to the issues for which the taxpayer claimed amnesty. (ITDAA Section 10). 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 and all facts relevant to those issues, as in existence as of the time the amnesty payment is made.” Further answering, Petitioner states Section 520.105(k)(1) does not relieve the Department from complying with its obligations under the remaining code provisions. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Denied. Further answering, Petitioner states there was never an “Established Liability,” as defined by 86 Ill. Admn. Code § 520.101(b)(5). To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner admits he was induced to participate in Amnesty Program based on assurances that if he prevailed in the “Administrative Review Proceeding” he would receive a repayment. Petitioner admits he made payments for an unestablished liability, which should have been returned when the Department did not assess a liability or upon reversal of the administrative law judge’s ruling in the Administrative Review Proceeding. Further answering, under 86 Ill. Admin. Code § 520.105(f)(2), the Department was to proceed with the audit as if no payment was made, which it failed to do. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner denies he had any liability to the Department. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner admits he submitted form IL1040-X, which contained the same information as his original tax returns, indicating he had no liability to the State of Illinois. Further answering, Petitioner's submission was based on the recommendation of the Department to effectuate the repayment of the funds which he was due after conferring with employees of the Department, who were confused as to how to effectuate the repayment. Further answering, Petitioner has protested any liability from 2009 through present. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner admits he made payments to the Department while under audit. Further answering, Petitioner states EDA -24 was not conclusive and was not an assessment of tax liability nor did it establish his tax liability. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner admits he made payments to the Department while under audit. Further answering, Petitioner states EDA -24 was not conclusive and was not an assessment of tax liability nor did it establish his tax liability. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner denies that he had any established or assessed liability. Further answering, Petitioner states the Department had only proposed liabilities at the time of his payment and the Court's determination of his Florida residency negated any claim to liability, since it shifted the burden onto the Department. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Denied. Further answering, Petitioner maintains he was a Florida resident since 2002, which was established as a matter of law by the Circuit Court of Cook County in the Administrative Review Proceeding. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner denies he is prohibited from obtaining repayment of the amounts he paid for an unestablished liability subject to 86 Ill.Admin.Code § 520.105(f)(2). To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

**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.

**ANSWER:** Petitioner incorporates by reference his responses to the allegations of Paragraphs 1 through 24 as his response to Paragraph 25.

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).

**ANSWER:** Petitioner admits that Paragraph 26 accurately quotes portions of 35 ILCS 5/911(a)(1). Further answering, Petitioner states he has no liability or proposed tax liability and was induced to participate in Amnesty Program based on assurances that if he prevailed in the Administrative Review Proceeding he would receive a repayment. Further answering, the Department was to continue the audit and needed to assess the liability as provided in 86 Ill.Admin.Code § 520.105(f)(2). To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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).

**ANSWER:** Petitioner denies he is prohibited from obtaining repayment of the amounts he paid for an unestablished liability subject to 86 Ill.Admin.Code § 520.105(f)(2). To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.*

**ANSWER:** Petitioner admits that Paragraph 26 accurately quotes portions of 35 ILCS 5/911(c). Petitioner admits that he and the Department executed IL-872 on December 12, 2009, which extended the time for the Department to assess a tax liability to April 15, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner admits that Paragraph 29 accurately quotes portions of 86 Ill. Admin. Code § 520.105(l). Petitioner admits mere participation in the Amnesty program does not alter the statute of limitations. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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).

**ANSWER:** Petitioner admits that Paragraph 30 accurately quotes the cited cases, but denies the cited cases have any precedential value to the present dispute. Further answering, Petitioner denies he has not complied with any applicable statutes of limitations. To the extent a

further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Petitioner admits that Paragraph 30 accurately quotes the cited case, but denies the cited case has any precedential value to the present dispute. Further answering, Petitioner denies he has not complied with any applicable statutes of limitations. Further answering, Petitioner states he made the payment while under audit, and denies he amend his tax returns. Therefore, the Department was aware of Petitioner’s position was that he made the payment. Further answering, the Department was under obligation to continue the audit and establish the liability or repay the funds. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Denied.

**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.*

**ANSWER:** Admitted.

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

**ANSWER:** Admitted.

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

**ANSWER:** Admitted.

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.

**ANSWER:** Admitted.

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**.

**ANSWER:** Petitioner denies that the statute of limitations period for a repayment claim was October 15, 2009. Further answering, Petitioner states that prior to the overpayment in November 2010, which was identified as an overpayment in 2010, there was no reason to request repayment. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Admitted.

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.

**ANSWER:** Petitioner admits that he and Department executed Form IL-872 on December 12, 2009, for the express purpose of extending the time for the Department to assess additional liability. Further answering, Petitioner states that prior to the overpayment in November 2010, which was identified as an overpayment in 2010, there was no reason to request a repayment. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Denied. Further answering, Form IL-872 was executed to extend the time for the Department to assess any additional liability until April 15, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Petitioner admits that no additional IL – 872 forms were executed. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

42. *[The Department's Affirmative Defenses do not contain a Paragraph 42 and, therefore, Petitioner makes no response to Paragraph 42]*

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

**ANSWER:** Petitioner admits he was induced to participate in Amnesty Program based on assurances that if he prevailed in the “Administrative Review Proceeding” it would be repaid. Petitioner admits he paid the Department \$8,075 for an unestablished liability based on the representation that the Department would return the money if it did not assess an additional liability or if Petitioner prevailed in the Administrative Review proceeding. Further answering, under 86 Ill. Admin. Code § 520.105(f)(2), the Department was to proceed with the audit as if no payment was made, which it failed to do. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Petitioner admits November 1, 2011, is one year after November 1, 2010. Further answering, Petitioner states he had already requested that the funds be repaid if he prevailed in the Administrative Review Proceeding or if the Department did not assess any liability by April 15, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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**.

**ANSWER:** Denied.

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.

**ANSWER:** Petitioner admits that on December 30, 2013 he submitted Form IL 1040-X which contained the same information as his original returns. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Petitioner admits that on December 30, 2013 he submitted Form IL 1040-X which contained the same information as his original returns. Further answering, Petitioner denies that the “statutory deadline” for him to request return of the payment he previously made was November 1, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Denied.

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

**ANSWER:** Denied.

### **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.*

**ANSWER:** Admitted.

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

**ANSWER:** Admitted.

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

**ANSWER:** Admitted.

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.

**ANSWER:** Admitted.

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**.

**ANSWER:** Petitioner denies that the statute of limitations period for requesting repayment was October 15, 2010. Further answering, Petitioner states that prior to the overpayment in November 2010, which was identified as an overpayment in 2010, there was no reason to request repayment. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Admitted.

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.

**ANSWER:** Petitioner admits that he and Department executed Form IL-872 on December 12, 2009, for the express purpose of extending the time for the Department to assess additional liability. Further answering, Petitioner states that prior to the overpayment in November 2010, which was identified as an overpayment in 2010, there was no reason to request repayment. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Denied. Further answering, Form IL-872 was executed to extend the time for the Department to assess any additional liability until April 15, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Petitioner admits that no additional IL – 872 forms were executed. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Petitioner admits he was induced to participate in Amnesty Program based on assurances that if he prevailed in the “Administrative Review Proceeding” it would be repaid. Petitioner admits he paid the Department \$111,186 for an unestablished liability based on the representation that the Department would return the money if it did not assess an additional liability or if Petitioner prevailed in the Administrative Review proceeding. Further answering, under 86 Ill. Admin. Code § 520.105(f)(2), the Department was to proceed with the audit as if no payment was made, which it failed to do. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Petitioner admits November 1, 2011, is one year after November 1, 2010. Further answering, Petitioner states he had already requested that the funds be repaid if he prevailed in the Administrative Review Proceeding or if the Department did not assess any liability by April 15, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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**.

**ANSWER:** Denied.

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.

**ANSWER:** Petitioner admits he submitted form IL1040-X, which contained the same information as his original tax returns, indicating he had no liability to the State of Illinois. Further answering, Petitioner's submission was based on the recommendation of the Department to effectuate the repayment of the funds which he was due after conferring with employees of the Department, who were confused as to how to effectuate the repayment. Further answering, Petitioner has protested any liability from 2009 through present. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Petitioner admits that on December 30, 2013 he submitted Form IL 1040-X which contained the same information as his original returns. Further answering, Petitioner denies that the "statutory deadline" for him to request return of the payment he previously made was November 1, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Denied.

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

**ANSWER:** Denied.

### **2007**

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

**ANSWER:** Admitted. Further answering, Petitioner denies that he had any obligation to file IL -1040 for tax year 2007.

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.

**ANSWER:** Petitioner admits that IITA § 911(a)(1), the statute of limitations period for filing a refund, is inapplicable. Further answering, Petitioner denies that he had any obligation to file Form IL 1040 for tax year 2007. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Admitted.

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

**ANSWER:** The Form IL-872 that had been executed was to extend the time for the Department's assessment of an additional tax liability. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Petitioner admits he was induced to participate in Amnesty Program based on assurances that if he prevailed in the "Administrative Review Proceeding" it would be repaid. Petitioner admits he paid the Department \$185,660 for an unestablished liability based on the representation that the Department would return the money if it did not assess an additional liability or if Petitioner prevailed in the Administrative Review proceeding. Further answering, under 86 Ill. Admin. Code § 520.105(f)(2), the Department was to proceed with the audit as if no payment was made, which it failed to do. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Petitioner admits November 1, 2011, is one year after November 1, 2010. Further answering, Petitioner states he had already requested that the funds be repaid if he prevailed in the Administrative Review Proceeding or if the Department did not assess any liability by April 15, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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**.

**ANSWER:** Denied.

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.

**ANSWER:** Petitioner admits he submitted form IL1040-X, which contained the same information as his original tax returns, indicating he had no liability to the State of Illinois. Further answering, Petitioner's submission was based on the recommendation of the Department to effectuate the repayment of the funds which he was due after conferring with employees of the Department, who were confused as to how to effectuate the repayment. Further answering, Petitioner has protested any liability from 2009 through present. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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

**ANSWER:** Denied. Petitioner admits that on December 30, 2013 he submitted Form IL 1040-X which contained the same information as his original returns. Further answering, Petitioner denies that the "statutory deadline" for him to request return of the payment he previously made was November 1, 2011. To the extent a further response is required to the allegations of this Paragraph, Petitioner denies said allegations.

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.

**ANSWER:** Denied.

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

**ANSWER:** Denied.

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Respectfully submitted,

EDMUND J. SWEENEY

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Mark N. Senak, one of his attorneys

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