



## 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.

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.

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.

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.”

7. On August 1, 2006, Mr. Sweeney responded to the IDOR's June 12, 2006 correspondence. Mr. Sweeney explained the Deficiency Notice was erroneous because *the 1002 North Crosby property was not built 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.

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.”

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.

10. On December 21, 2007, the IDOR issued Mr. Sweeney a Notice of Deficiency (hereinafter “NOD”) in the amount of \$88,862 for the tax years 2002 – 2003.

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

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

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.

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.

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.

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.

17. 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.

18. 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.

19. 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., Ill., filed Mar. 24, 2010).

20. 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 the Department was going to seek payment for tax deficiencies for 2005, 2006 and 2007, including substantial penalties.

21. 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.

22. The Department claimed that if Mr. Sweeney did not avail himself of this opportunity, his penalties and interest would increase to 20% per annum.

23. 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 Department’s finding for the previous tax years, Mr. Sweeney paid the IDOR \$314,911.00 for the claimed deficiency for tax years 2005 through 2007.

24. 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.

25. 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.

26. 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.

27. On June 26, 2013, after repeated delays and requests for extension by the Department, 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 an Order reversing the Department’s decision. *See, Exhibit D*, Opinion and Order, dated June 26, 2013.

28. 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

29. 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.

30. Subsequently, in 2013 Mr. Sweeney requested a refund 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.

31. 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 his original return was filed; or one year after the date his Illinois tax was paid; whichever is latest.

32. Each of the periods provided in the November 12, 2015 Notice of Claim Denial lapsed before the time the Circuit Court of Cook County ruled that Mr. Sweeney was not an Illinois resident and had not reestablished Illinois residency.

### **COUNT I: BREACH OF CONTRACT**

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

34. 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.

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

36. The IDOR has breached the agreement by refusing to repay Mr. Sweeney the amounts he paid.

37. 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.

WHEREFORE, Petitioner EDMUND SWEENEY hereby requests entry of an Order finding that he is entitled to a refund in the about of \$314,911 from the Illinois Department of Revenue, plus prejudgment interest, and for such further relief as is deemed equitable and just.

### **COUNT II: EQUITABLE ESTOPPEL**

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

39. 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.

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

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

42. 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 made by Ms. Weldin were false.

43. 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 amount for 2005 – 2007.

44. 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. Sweeney in that it resulted in pecuniary loss to Mr. Sweeney.

45. 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.

WHEREFORE, Petitioner EDMUND SWEENEY hereby requests entry of an Order finding that he is entitled to a refund in the about of \$314,911 from the Illinois Department of Revenue, plus prejudgment interest, and for such further relief as is deemed equitable and just.

**COUNT III: UNJUST ENRICHMENT**

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

47. 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.

48. 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.

49. 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.

50. 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 Mr. Sweeney was not an Illinois domiciliary beginning in 2002 and that he did not reestablish his domicile in Illinois during 2005 – 2007.

51. 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.

WHEREFORE, Petitioner EDMUND SWEENEY hereby requests entry of an Order finding that he is entitled to a refund in the about of \$314,911 from the Illinois Department of Revenue, plus prejudgment interest, and for such further relief as is deemed equitable and just.

#### **Count IV: Fraudulent Inducement**

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

53. 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, he IDOR would pay back these sums if it was ultimately ruled that he was not an Illinois resident.

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

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

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

57. 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.

58. 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.

WHEREFORE, Petitioner EDMUND SWEENEY hereby requests entry of an Order finding that he is entitled to a refund in the about of \$314,911 from the Illinois Department of Revenue, plus prejudgment interest, and for such further relief as is deemed equitable and just.

Respectfully submitted,

EDMUND J. SWEENEY

By:   
Mark N. Senak, one of his attorneys

Mark Senak ([msenak@skgsmlaw.com](mailto:msenak@skgsmlaw.com))  
Senak Keegan Gleason Smith & Michaud, Ltd.  
621 S. Plymouth Court, First Floor  
Chicago, IL 60605  
312-214-1400(t)  
312-214-1401(f)

1  
2  
3  
4

# Exhibit A

**Notice of Claim Denial**  
for Form IL-1040, Individual Income Tax Return



November 12, 2015

\_\_\_\_\_ #BWNKMGV  
\_\_\_\_\_ #CNXX XX12 5946 3369#  
\_\_\_\_\_ EDMUND J. SWEENEY  
\_\_\_\_\_ 621 S PLYMOUTH CT STE 100  
\_\_\_\_\_ CHICAGO IL 60605-1820



Letter ID: CNXXXX1259463369

Taxpayer ID: XXX-XX-3437  
Account ID: P13549340  
Audit ID: A1131501568  
Reporting period: December 2005

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

**If you agree** and your account is in balance, no action is required. You will receive a full refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

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

- **If the amount of tax at issue, exclusive of penalty and interest is more than \$15,000, or if you are not claiming an overpayment of tax but the total penalties and interest are more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice.** Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice.** If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). If we do not receive your protest within 60 days, this denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

If you have questions, call us at the telephone number shown below.

Sincerely,

Constance Beard  
Director

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

(217) 558-4960

# Explanation of Audit Adjustments

Income Tax



November 12, 2015

\_\_\_\_\_ #BWNKMGV  
#CNXX X155 4987 5362#  
EDMUND J. SWEENEY  
621 S PLYMOUTH CT STE 100  
CHICAGO IL 60605-1820



**Letter ID:** CNXXX15549875362

**Taxpayer ID:** XXX-XX-3437

**Account ID:** P13549340

**Audit ID:** A1131501568

**Reporting period:** December 2005

Explanation of adjustments for tax period ending 12/31/2005

Income change

Tax impact

We determined your claim has been denied in full because you did not file your amended return within the required period of time. If your state change decreases your Illinois tax, and you want a refund, you must file an amended return within three years from the date of the return (including extensions), three years after the date your original return was filed, or one year after the date your Illinois tax was paid; whichever is latest.  
[ITA Section 911(a)(1)(2)]

## Statement

Date: November 12, 2015  
Letter ID: CNXXXX1259463369  
Name: EDMUND SWEENEY  
Taxpayer ID: XXX-XX-3437  
Account ID: P13549340  
Audit ID: A1131501568  
Reporting period: December 2005

### Computation of claim denial

Reporting period ending:	12/31/2005
Claim receive date:	12/31/2013
Amount of original claim:	\$8,075.00
Amount of proposed adjustment:	(\$8,075.00)
Net claim allowed:	\$0.00

### Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns.

### Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

# Exhibit B

# Notice of Claim Denial

or Form IL-1040, Individual Income Tax Return



November 12, 2015

#BWNKMGV  
#CNXX X211 3768 72X4#  
EDMUND J. SWEENEY  
621 S PLYMOUTH CT STE 100  
CHICAGO IL 60605-1820



Letter ID: CNXXX211376872X4

Taxpayer ID: XXX-XX-3437  
Account ID: P13549340  
Audit ID: A1131501568  
Reporting period: December 2006

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

If you agree and your account is in balance, no action is required. You will receive a full refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

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

- If the amount of tax at issue, exclusive of penalty and interest is more than \$15,000, or if you are not claiming an overpayment of tax but the total penalties and interest are more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within **60 days** of this notice. If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). If we do not receive your protest within **60 days**, this denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

If you have questions, call us at the telephone number shown below.

Sincerely,

Constance Beard  
Director

ILLINOIS DEPARTMENT OF REVENUE  
AUDIT BUREAU  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
(217) 558-4960

# Explanation of Audit Adjustments

## Income Tax



November 12, 2015

#BWNKMGV  
#CNXX X192 7971 8X83#  
EDMUND J. SWEENEY  
621 S PLYMOUTH CT STE 100  
CHICAGO IL 60605-1820



Letter ID: CNXXX19279718X83

Taxpayer ID: XXX-XX-3437  
Account ID: P13549340  
Audit ID: A1131501568  
Reporting period: December 2006

### Explanation of adjustments for tax period ending 12/31/2006

Income change

Tax impact

We determined your claim has been denied in full because you did not file your amended return within the required period of time. If your state change decreases your Illinois tax, and you want a refund, you must file an amended return within three years from the date of the return (including extensions), three years after the date your original return was filed, or one year after the date your Illinois tax was paid; whichever is latest.  
[ITA Section 911(a)(1)(2)]

# Statement

Date: November 12, 2015  
Letter ID: CNXXX211376872X4  
Name: EDMUND SWEENEY  
Taxpayer ID: XXX-XX-3437  
Account ID: P13549340  
Audit ID: A1131501568  
Reporting period: December 2006

## Computation of claim denial

Reporting period ending:	12/31/2006
Claim receive date:	12/31/2013
Amount of original claim:	\$111,186.00
Amount of proposed adjustment:	(\$111,186.00)
Net claim allowed:	\$0.00

## Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns.

## Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

# Exhibit C

**Notice of Claim Denial**  
for Form IL-1040, Individual Income Tax Return



November 12, 2015

#BWNKMGV  
#CNXX X1X4 7636 7528#  
EDMUND J. SWEENEY  
621 S PLYMOUTH CT STE 100  
CHICAGO IL 60605-1820



Letter ID: CNXXX1X476367528

Taxpayer ID: XXX-XX-3437  
Account ID: P13549340  
Audit ID: A1131501568  
Reporting period: December 2007

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

If you agree and your account is in balance, no action is required. You will receive a full refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

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

- If the amount of tax at issue, exclusive of penalty and interest is more than \$15,000, or if you are not claiming an overpayment of tax but the total penalties and interest are more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice. If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing judge. Submit your protest on Form EAR-14, Form for Filing a Protest for Income Tax, (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). If we do not receive your protest within 60 days, this denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

If you have questions, call us at the telephone number shown below.

Sincerely,

Constance Beard  
Director

ILLINOIS DEPARTMENT OF REVENUE  
AUDIT BUREAU  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
(217) 558-4960

# Explanation of Audit Adjustments

Income Tax



November 12, 2015

\_\_\_\_\_  
#BWNKMGV  
#CNXX X119 9688 16X0#  
EDMUND J. SWEENEY  
621 S PLYMOUTH CT STE 100  
CHICAGO IL 60605-1820



Letter ID: CNXXX119968816X0

Taxpayer ID: XXX-XX-3437  
Account ID: P13549340  
Audit ID: A1131501568  
Reporting period: December 2007

Explanation of adjustments for tax period ending 12/31/2007

Income change

Tax impact

We determined your claim has been denied in full because you did not file your amended return within the required period of time. If your state change decreases your Illinois tax, and you want a refund, you must file an amended return within three years from the date of the return (including extensions), three years after the date your original return was filed, or one year after the date your Illinois tax was paid; whichever is latest.  
[ITA Section 911(a)(1)(2)]

# Statement

Date: November 12, 2015  
Letter ID: CNXXX1X476367528  
Name: EDMUND SWEENEY  
Taxpayer ID: XXX-XX-3437  
Account ID: P13549340  
Audit ID: A1131501568  
Reporting period: December 2007

## Computation of claim denial

Reporting period ending:	12/31/2007
Claim receive date:	12/31/2013
Amount of original claim:	\$185,660.00
Amount of proposed adjustment:	(\$185,660.00)
Net claim allowed:	\$0.00

## Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns.

## Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of the overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.



On February 28, 2002, Toronto-Dominion Bank (“TD Bank”) purchased certain components of Stafford Trading and the technology assets of Ragnarok. At the time of the sale, Plaintiff’s employment with Stafford Trading ended and he surrendered his 1 million shares of Ragnarok.

After the sale of Stafford Trading, Plaintiff began working as a Managing Director for TD Options, LLC (“TD Options”), the new entity formed by TD Bank to operate the businesses acquired from Stafford Trading. TD Options was a broker/dealer of securities formed as a Delaware limited liability company with offices in London, New York, Philadelphia, Chicago and San Francisco. Plaintiff was listed as a “Member” on the Amended and Restated Limited Liability Company Agreement of TD Options, LLC. (Taxpayer Ex. 2). Plaintiff worked in TD Options’ Illinois office in 2002 and 2003. As per the TD Options LLC Agreement, Plaintiff acquired Class B units in the company, which entitled him to an additional \$12 million in profit-sharing payments if the company achieved certain revenue thresholds during an “earn-out period,” which lasted from 2002-2006. For Plaintiff to qualify for the profit distributions, he had to remain employed by the company and abide by certain obligations. Assuming he did so, he was eligible to receive periodic profit distributions until the end of the earn-out period in 2006, at which time his units in the company would expire and he would not be entitled to any further profits of the company.

Plaintiff’s duties at TD Options involved risk management and client development. To develop clients for the new business, Plaintiff was required to travel extensively to client sites in the United States and abroad. While traveling, Plaintiff would monitor trading activity via remote internet connection. Plaintiff would occasionally return to TD Option’s Chicago office to meet with the traders and attend strategy sessions.

Plaintiff testified that as early as the summer of 2001, when it became evident that TD Bank would be buying the majority of Stafford Trading and he would receive a substantial distribution for his ownership interest, Plaintiff determined he would be in a position to move to Florida. Plaintiff was not originally from Chicago, had no family in Chicago and his new job did not require him to live in Chicago. Plaintiff's parents lived in Florida and were in need of assistance while recuperating from a series of health problems.

Plaintiff testified that, following the closing of Stafford Trading on February 28, 2002, he packed all his personal effects and moved to his parents' home at the Cocoa Beach address. According to Plaintiff, he closed his local bank account in Illinois and changed his address so mail would be delivered to him in Florida.

Plaintiff testified to living at the Cocoa Beach address from March 2002 through June 2002, assisting his parents and traveling to various TD Options offices and client sites, including Chicago, to perform his job duties.

Plaintiff, along with three former colleagues from Stafford Trading, rented a condominium on June 1, 2002 at 300 South Pointe Drive, #2607, Miami Beach, Florida 33139 ("Miami Beach address"). They intended to live at the condominium and operate a proprietary trading operation similar to what they had done at Stafford Trading. Plaintiff and his colleagues then proceeded to set up operations in Miami Beach and several other demographically similar cities including: Milwaukee, Dublin, Barcelona, Palm Beach and Tampa.

In June of 2002, Plaintiff opened a bank account in Florida at Bank of America. Plaintiff also testified to becoming a member of St. Patrick's church in Miami late in 2003.

On or about December 26, 2002, Plaintiff obtained his Florida driver's license and Florida Voters Registration Card. Plaintiff surrendered his Illinois driver's license when he obtained his Florida license.

Throughout 2002 and into 2003, TD Options underperformed and there was increasing pressure for Plaintiff to spend time in Chicago supervising TD Options' traders. In early 2003, needing to spend more time in Chicago but wanting to avoid any appearance that he had re-established his Illinois domicile, Plaintiff purchased property and built a home located at 4211 West Dunes Highway, Pines, Indiana 46360 ("Indiana property") and commuted to Chicago.

In late 2004 the losses to TD Options continued to mount and Plaintiff was required to take an even more active role in the day-to-day management of the firm's trading activities. Frustrated by the time consuming commute from Northwest Indiana, Plaintiff leased a townhome in Chicago at 1002 North Crosby, Chicago, IL 60610 ("Crosby property") from December 2004 until the end of the earn-out period in May of 2006. While Plaintiff was required to be in the Chicago office more often, he still resided in Florida and traveled to other TD Options offices to meet with traders and for business development purposes.

On May 31, 2006, Plaintiff's Class B units in TD Options expired and his employment with TD Options ended. On June 1 2006, his lease on the Crosby property ended and he and several former traders at Stafford Trading then devoted their full-time efforts to operating their trading company in Florida.

Though initially excluded because they related to periods outside of 2002 and 2003, the following were admitted into evidence by court order. Plaintiff claims this evidence shows his continued on-going physical presence in Florida and his intent to remain there after the audit period:

- Documents relating to the purchase of a condominium and other real estate in Florida for 2007 and 2008 (Taxpayer Ex. 53, 54, 57, 69, 70);
- Florida Real Estate Tax Statements for 2007 and 2008 for four Florida condominiums owned by Plaintiff (Taxpayer Ex. 51, 58, 67, 68);
- Utility Bills for the listed properties after 2006 (Taxpayer Ex. 40, 41, 59);
- Bank Statements showing the maintenance of bank accounts in Florida for the years 2007 and 2008 (Taxpayer Ex. 52, 66);
- Florida Intangible Income Tax Returns for 2005 (Taxpayer Ex. 37);
- Documents relating to the registration and maintenance of an automobile in Florida for 2007 (Taxpayer Ex. 49-50);
- Documents relating to the registration and maintenance of a boat in Florida in 2005 (Taxpayer Ex. 34, 35, 36, 38, 55, 56);
- Florida Five-Year Fishing License (Taxpayer Ex. 39);
- Documents evidencing yacht club membership in Florida (Taxpayer Ex. 47);
- Documents showing continued mail delivery in Florida (Taxpayer Ex. 33, 37, 38, 40, 50, 51, 52, 55, 59, 66); and
- Plaintiff's 2002 Form W-1099, which allegedly evidences the vast majority of the income he earned in 2002 was while working as an independent contractor in Florida. (Taxpayer Ex. 81)

Additionally, Plaintiff filed a "declaration of domicile" in Florida in 2007.

#### **PROCEDURAL HISTORY**

On May 15, 2006, Plaintiff received a letter from the Illinois Department of Revenue ("IDOR," "Department," and "Defendant") informing him that his residency status was being examined. The letter stated that the basis for the IDOR's action was to determine whether Plaintiff continued to be domiciled in the State of Illinois.

On June 6, 2006, Plaintiff responded to the IDOR's correspondence by providing a copy of his Florida Drivers License, Florida utility bills, and other documents evidencing that he

maintained his primary residence in Florida. Plaintiff also informed the IDOR that when he was required to work in Chicago in 2003 he was residing at the Indiana property.

On June 12, 2006, IDOR Auditor Rae Ann Weldin (the "Auditor") sent Plaintiff a Notice of Proposed Deficiency. The IDOR advised Plaintiff that if he disagreed with the conclusions of the Notice of Proposed Deficiency that he could request the matter be referred to an informal conference board ("ICB") for further review. To do so, Plaintiff would have to sign Form ICB-1, which required him to agree to a tolling of the Statute of Limitations for the Notice of Deficiency until 180 days after a final ICB decision had been made. Plaintiff agreed to participate in the ICB hearing and toll the statute of limitations.

A copy of the Auditor's Report ("Report") was enclosed with the Notice of Proposed Deficiency. The Report stated that, based on a review of all the information, the IDOR was changing Plaintiff's state income tax return for tax years 2002 through 2004 because Plaintiff had never given up his residence at the Crosby property.<sup>1</sup> Therefore, according to the IDOR, Plaintiff was an Illinois resident and responsible for reporting all income to Illinois for tax purposes.

On August 1, 2006, Plaintiff responded to Defendant's June 12, 2006 correspondence, where he explained that the Notice of Proposed Deficiency was erroneous because the Crosby property was not built until 2004. Plaintiff attached a copy of the lease for the Crosby property and other documents to support his claim.

On November 20, 2006, the IDOR issued Plaintiff a refund for his 2003 taxes. The IDOR correspondence stated that the IDOR had reviewed the information Plaintiff provided and "changed the account to show the return as you requested." (Taxpayer Ex. 46). Plaintiff testified

---

<sup>1</sup> The Court notes that while 2004 was included in the Notice of Proposed Deficiency, this case focuses solely on tax year 2002 and 2003.

that, because of the refund, he believed that the IDOR had determined he was a Florida resident and that the matter was concluded.

An ICB hearing was then scheduled for May 15, 2007. At the ICB, Plaintiff was informed by IDOR that the refund was issued in error.

On May 17, 2007, the IDOR sent a letter to Al Juraska, Plaintiff's accountant, requesting additional information.<sup>2</sup> On June 12, 2007, Plaintiff responded to the Department's questions, reiterating that he did not live in Illinois during 2002 – 2003. (Taxpayer Ex. 64). IDOR then informed Plaintiff that the rental of the Crosby property from December 2004 through June 2006 evidenced that he never intended to abandon his Illinois residence in 2002 and 2003.

Plaintiff was issued a Notice of Deficiency ("NOD") on December 21, 2007 in the amount of \$88,862.00. The basis of the NOD was the Department's determination that Plaintiff was a resident of Illinois for the 2002 and 2003 tax years. Plaintiff timely protested the NOD and requested a hearing.

On June 26, 2009, an administrative hearing was held before Administrative Law Judge Julie-April Montgomery ("ALJ"), who concluded that Plaintiff was a resident of Illinois for 2002 and 2003 and recommended that the NOD be finalized for the 2002 and 2003 tax years.

#### STANDARD OF REVIEW

The standard of review of an administrative agency's decision depends on whether the issue presented is a question of fact, a question of law, or a mixed question of law and fact.

*Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 272, 917 N.E.2d 899, 904 (2009). When reviewing an administrative agency's decision, a question of fact is overturned only where the administrative decision is against the manifest weight of the evidence. *Decatur Sports Found. v.*

---

<sup>2</sup> The Court cannot find a copy of the May 17, 2007 correspondence in the record. Therefore, the Court is unaware as to what specific additional information was requested. However, a copy of Plaintiff's response to the May 17, 2007 letter is in the record as Taxpayer Ex. 64.

*Dep't of Revenue*, 156 Ill. App. 3d 623, 627, 509 N.E.2d 1103, 1105 (4th Dist. 1987). An administrative agency's findings and conclusions on questions of fact are *prima facie* true and correct and will not be disturbed unless they are against the manifest weight of the evidence. *Cent. Furniture Mart, Inc. v. Johnson*, 157 Ill. App. 3d 907, 910, 510 N.E.2d 937, 939 (1st Dist. 1987). An administrative agency's findings are against the manifest weight of the evidence only where an opposite conclusion is clearly evident. *Balla v. Dep't of Revenue*, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981). The Court is not to substitute its own judgment for that of the administrative law judge; rather, it is to determine whether the ALJ's decision is against the manifest weight of the evidence or contravenes the law. *Gas Research Inst. v. Dep't of Revenue*, 154 Ill. App. 3d 430, 433-34, 507 N.E.2d 141, 143 (1st Dist. 1987). An agency's conclusion on a mixed question of law and fact is reviewed for clear error. *Exelon Corp.*, 234 Ill. 2d at 272, 917 N.E.2d at 904.

## DISCUSSION

The Court now turns to a discussion of Plaintiff's claims that the Administrative Law Judge's decision was clearly erroneous. Specifically, Plaintiff claims that: (1) the ALJ erred by ruling that the Department's claim was not barred by the statute of limitations; (2) the ALJ's finding that the IDOR established its *prima facie* case was clearly erroneous; (3) Plaintiff sustained his burden of rebutting the IDOR *prima facie* case; and (4) IDOR violated fundamental concepts of due process and prejudiced Plaintiff's ability to defend the charges. The Court will address each of these in turn.

### I. THE DEPARTMENT'S CLAIM WAS NOT BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff's first argument is that the ALJ erred in ruling that the NOD was not barred by the statute of limitations. The ALJ so concluded because the IDOR's decision to refund

Plaintiff's 2003 tax payments was not a final determination of his tax liability. Plaintiff argues that this is clearly erroneous because the letter notifying Plaintiff of the refund satisfied the statutory definition of a "notice of decision," as set forth in Section 908 of the Illinois Income Tax Act ("IITA"). Section 908(d) provides:

The Department's notice of deficiency shall become a final assessment at the end of the 60th day after the date of issuance of the notice of deficiency. If the taxpayer files a protest with the Department, and the taxpayer does not elect to be subject to the provisions of the Illinois Independent Tax Tribunal Act of 2012, then the action of the Department on the taxpayer's protest shall become final: (1) 30 days after issuance of a notice of decision as provided in subsection (b); or (2) if a timely request for rehearing was made, upon the issuance of a denial of such request or the issuance of a notice of final decision as provided in subsection (c).

35 ILCS 5/908(d). Pursuant to subsection (b), the Department shall, as soon as practicable after reconsideration and hearing, if any, issue a notice of decision by mailing such notice by certified or registered mail. 35 ILCS 5/908(b). "Such notice shall set forth briefly the Department's findings of fact and the basis of the decision in each case decided in whole or in part adversely to the taxpayer." *Id.*

Plaintiff argues that the November 20, 2006 correspondence from the IDOR, which issued Taxpayer a refund, satisfies Section 908(d) as it contains the word "notice" and provides the basis of the decision. Plaintiff argues that the sole issue he was contesting was his residency status. According to Plaintiff, the IDOR's refund impliedly notified Plaintiff that the IDOR had made a factual finding that he was not an Illinois resident in 2003. Plaintiff further argues that the refund provided the basis of the decision when it stated that the IDOR "received the information necessary to support the amount reported on your Form IL-1040." (Taxpayer Ex. 46). According to Plaintiff, this means that the IDOR's basis was the information Plaintiff submitted.

Plaintiff further argues that the November 20, 2006 refund had the result that the affirmative filing requirements of Section 908(a) (written protest filed within 60 days after issuance of notice of deficiency) did not apply. Plaintiff argues that he received a Notice of Proposed Deficiency on May 15, 2006 to which he responded by taking the opportunity to participate in the ICB process and toll the statute of limitations for issuance of a NOD for 180 days after the ICB decision. Plaintiff then received a refund on November 20, 2006 and a Notice of Deficiency on December 21, 2007.

Defendant argues that Plaintiff's theory would effectively negate the entire contestation process which is initiated when a taxpayer receives a Notice of Deficiency. Defendant further argues that Plaintiff received the Notice of Proposed Deficiency, dated June 16, 2006, which allowed him to participate in the ICB and that Plaintiff further agreed to toll the statute of limitations for issuance of the NOD for 180 days after the ICB resolution.

The ALJ concluded that Section 906 requires a protest be filed with respect to a notice of deficiency, not a proposed notice of deficiency.<sup>3</sup> The ALJ found that the record did not reflect the filing of a written protest as proscribed by Department regulations to a matter other than the NOD at issue. 35 ILCS 5/908(a); *see* 86 Ill. Admin Code Sec. 200.120(b). Moreover, the ALJ stated that the correspondence that accompanied the refund did not state that the refund was the result of either a protested matter or a final decision. Finally, the ALJ found that Plaintiff agreed to toll the statute of limitations for issuance of the NOD until 180 days after a decision by the ICB and the record gives no indication that the NOD was not issued within the 180 day period.

---

<sup>3</sup> Section 906 provides that if "a protest has been filed with respect to a notice of deficiency issued by the Department with respect to a taxable year, and the decision of the Department on such protest has become final, the Department shall be barred from issuing a further or additional notice of deficiency for such taxable year, except in the case of fraud, mathematical error, a return that is not considered processable, as the term is defined in Section 3-2 of the Uniform Penalty and Interest Act, or as provided in section 905(d), (e), or (g)." 35 ILCS 5/906.

(Pl.'s Mem. Supp. Ex. A). The ALJ therefore found that there was no violation of the statute of limitations.

The Court agrees with the ALJ's determination. Section 906 clearly and unambiguously provides that the Department is barred from issuing a further notice of deficiency if a protest has been filed with respect to a notice of deficiency and the decision on such protest has become final. Here, Plaintiff did not receive the Notice of Deficiency until December 21, 2007. That is when the statute of limitations began to run, not on May 15, 2006 or November 20, 2006 when Plaintiff received a refund. Furthermore, Plaintiff did agree to toll the statute of limitations for issuance of the NOD until 180 days after a decision by the ICB. The November 20, 2006 correspondence does not state that the refund was the result of either a protested matter or a final decision. Additionally, as the ALJ found, Plaintiff has produced no evidence in the record that would give this court an indication that the NOD timely after the 180 day tolling period.

Plaintiff also makes the argument that the ALJ erred in ruling that Plaintiff waived the statute of limitations argument because it was not part of the parties' January 20, 2009 pretrial order. While Plaintiff may be correct, the ALJ determined that the Department was not barred by the statute of limitations for other reasons with which the Court agrees. Therefore, analysis of Sections 200.140(b) and 200.155(g) of the Illinois Administrative Code is obviated.

For the foregoing reasons, the Court finds that the ALJ's conclusion that the Department was not barred by the statute of limitations is not clearly erroneous.

## **II. THE DEPARTMENT ESTABLISHED ITS PRIMA FACIE CASE.**

Plaintiff next argues that the ALJ's finding that the IDOR established its *prima facie* case was erroneous because the conclusions stated in the Notice of Deficiency were based on information which was outdated and false.

While Illinois Courts have uniformly sustained a *prima facie* case based on corrected tax returns, Illinois law requires that the methods used to formulate the conclusions in a Notice of Deficiency must meet some minimum standard of decency and reasonableness when being called into question. *Mel-Park Drugs, Inc. v. Dep't of Revenue*, 218 Ill. App. 3d 203, 207, 577 N.E.2d 1278, 1281 (1st Dist. 1991); *Fillichio v. Dep't of Revenue*, 15 Ill. 2d 327, 155 N.E.2d 3 (1958). This reasonableness standard “is based upon the statutory provision which requires that the Department’s corrected returns be made “according to its best judgment and information.”” *Masini v. Dep't of Revenue*, 60 Ill. App. 3d 11, 14, 376 N.E.2d 324, 327 (1st Dist. 1978) (citing Ill. Rev. Stat. 1975, ch. 120, par. 443). To be entitled to the presumption of validity, the IDOR must show the correct return was prepared in a reasonable and accurate manner. 35 ILCS 5/404; *see also American Welding Supply Co. v. Dep't of Revenue*, 106 Ill. App. 3d 93, 435 N.E.2d 761 (5th Dist 1982). Where the Department disregards credible evidence or fails to fully investigate the facts on which its conclusions are based, the conduct of the Department is presumptively unreasonable. *Goldfarb v. Dep't of Revenue*, 411 Ill. 573, 578, 104 N.E.2d 606, 608 (1952) (auditor’s disregard of taxpayer’s records that were both competent and uncontradicted found to be unreasonable); *Fashion-Bilt Coat Mfg. Co. v. Dep't of Finance*, 383 Ill. 253, 259, 349 N.E.2d 41, 44 (1943) (auditor’s disregard of undisputed facts presented by taxpayer ruled to be arbitrary).

While some of Plaintiff’s evidence may lend credence to the argument that the Department’s information was false, it did not show that the Department disregarded credible evidence or failed to fully investigate the facts when preparing the NOD. Much of Plaintiff’s evidence and testimony which showed that the Department’s information was false was not presented until the hearing before the ALJ. This is well after the Department analyzed the tax

years covered by the NOD. Therefore, it cannot be said that the Department disregarded credible evidence or failed to fully investigate the facts on which the NOD relies. While Plaintiff may have rebutted the Department's *prima facie* case, this is not the same as proving that the Notice was not *prima facie* true.

The Department auditors have no duty to act as private investigators and check, double check and triple check every fact that they find. The Auditor is allowed to rely upon the evidence he or she gathers and draw reasonable conclusions from that evidence.

Plaintiff notes that the Auditor did not have a copy of Plaintiff's Florida Voter Registration Card when she made her audit and found that factor in favor of Illinois. Plaintiff argues that the Auditor never requested that Plaintiff provide a copy of the Registration Card. Plaintiff knew that his residence was at issue and the Registration Card was evidence that would bolster his position. Plaintiff's failure to provide the Registration Card does not make the Department's NOD unreasonable or show that the Department ignored evidence or failed to fully investigate the facts. In the present case, unlike in *Goldfarb* or *Fashion-Bilt Coat*, the Auditor did not disregard the documents submitted by Plaintiff in making the Report. Not being provided with documents is not the same as ignoring or disregarding documents.

The Auditor relied on two commercial databases, Experian and Westlaw, in reaching her conclusions. These databases provided information that Plaintiff had interests in several properties in Illinois. Plaintiff provided evidence that explained and supplemented the information the Auditor obtained. Again, this is an argument that would rebut the Department's *prima facie* case. The evidence the Plaintiff provided does not show that the Department disregarded evidence or failed to fully investigate. The properties were listed on more than one database. The Auditor testified that the mere fact that Plaintiff had a reported interest in Illinois

did not mean he actually lived at any of these addresses. However, this serves to rebut the *prima facie* case; not show that it is unreasonable.

The Court finds that the ALJ's determination that the Department established its *prima facie* case is not clearly erroneous.

### III. PLAINTIFF SUCCESSFULLY REBUTTED THE DEFENDANT'S PRIMA FACIE CASE

The Court will now analyze whether the ALJ's conclusion that Plaintiff failed to rebut the Department's *prima facie* case was clearly erroneous. The Court will first review the relevant law before analyzing each of the years at issue, 2002 and 2003, separately.

The NOD having been found to be *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax shown to be due therein, the burden shifts to Plaintiff to prove, by competent evidence, that the proposed assessment is not correct. *Fillichio*, 15 Ill. 2d at 333, 155 N.E.2d at 10. If Plaintiff's evidence "is not so inconsistent or improbable in itself as to be unworthy of belief, the burden then shifts to the Department which is required to prove its case by competent evidence." *Id.*

Section 201(a) of the Illinois Income Tax Act imposes an income tax "on the privilege of earning or receiving income in or as a resident of this State." 35 ILCS 5/201(a). The Act further goes on to define "resident" as an individual: (i) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year. 35 ILCS 5/1501(a)(20). The IDOR has promulgated rules and regulations to provide guidance in determining a taxpayer's residency:

If an individual acquires the status of a resident by virtue of being physically present in Illinois for other than temporary or transitory purposes, he remains a resident even though temporarily absent from Illinois. If, however, he leaves

Illinois for other than temporary or transitory purposes, he thereupon ceases to be a resident. If an individual is domiciled in Illinois, he remains a resident unless he is outside Illinois for other than a temporary or transitory purpose.

86 Ill. Admin. Code 100.3020(b). The Code goes on to provide that “[w]hether or not the purpose for which an individual is in Illinois will be considered temporary or transitory in character will depend upon the facts and circumstances of each particular case.” 86 Ill. Admin. Code 100.3020(c).

The Department has also described the relationship between residence and domicile, providing:

Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, the place to which he intends to return whenever he is absent. It is the place in which an individual has voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home.

86 Ill. Admin. Code 100.3020(d). An individual loses his Illinois domicile: (1) by locating elsewhere with the intention of establishing the new location as his or her domicile; or (2) by abandoning any intention of returning to Illinois. *Id.* The following are rebuttable presumptions of residence: (1) an individual receiving a homestead exemption for Illinois property is presumed to be a resident of Illinois; and (2) an individual who is an Illinois resident in one year is presumed to be a resident in the following year if he is present in Illinois more days than he is present in any other state. 86 Ill. Admin. Code 100.3020(f).

Finally, the Department clarified the type and amount of proof that is required to establish residency or nonresidency in

86 Ill. Admin. Code 100.3020(g)(1). In applying these guidelines, Illinois Courts have held that while a person may have many residences, they can have only one domicile. *See e.g., Casolari v. Pipkins*, 253 Ill. App. 3d 265, 624 N.E.2d 429 (5th Dist. 1993).

To establish domicile, a person must physically go to the new location and live there with the intention of making it their permanent home. *Owego Community Consol. School Dist. No. 434 v. Goodrich*, 28 Ill. App. 3d 407, 171 N.E.2d 816 (2nd Dist. 1960). To affect a change of domicile, there must be: (a) actual abandonment of first residence; (b) intention not to return to the first domicile; (c) physical presence established in the new domicile; and (d) an intention of making the last-acquired domicile a permanent home. *O'Boyle v. Personnel Bd. of City of Chicago*, 119 Ill. App. 3d 648, 456 N.E.2d 998 (1st Dist. 1983). Intent is the critical question in determining residence. *Connelly v. Gibbs*, 112 Ill. App. 3d 257, 445 N.E.2d 477 (1st Dist. 1983). To determine intent, a person's acts are given more weight than his declaration. *Id.* A person can acquire a domicile if he is personally present in a place and elects that location as his home, even if he never intends to remain in that physical structure on a permanent basis. *Dillavou v. County Officers Electoral Bd. of Sangamon County*, 260 Ill. App. 3d 127, 632 N.E.2d 1127 (4th Dist. 1994).

Affirmative acts are required to prove abandonment of an Illinois residence. *Hughes v. Illinois Public Aid Comm'n*, 2 Ill. 2d 374, 380-81, 118 N.E.2d 14, 17-18 (1954). Once an Illinois residency has been established, such residency is presumed to continue until the contrary is proven and the burden of proof rests with the party claiming the residency change. *In re Estate of Jackson*, 48 Ill. App. 3d 1035, 1038, 363 N.E.2d 919, 921 (4th Dist. 1977).

The finds the following factors are most significant:

- a. a person must physically go to the new location and live there with the intention of making it their permanent home;
- b. actual abandonment of first residence;
- c. intention not to return to the first domicile;
- d. physical presence established in the new domicile; and
- e. an intention of making the last-acquired domicile a permanent home.

**A. Plaintiff Moved to Florida.**

Plaintiff testified that he first moved to Florida, at his parents' Cocoa Beach address, in December of 2001. Plaintiff resided there until he leased the Miami Beach address in June of 2002. Consequently, plaintiff physically went to the new location with the intention of making it his permanent home.

How do we gauge his intent? We consider the factors set forth in Section 100.3020(g):

“[t]he evidence may include, but is not limited to, affidavits and evidence of: ... voter registration; automobile registration or driver's license; filing an income tax return as a resident of another state; home ownership or rental agreements; the permanent or temporary nature of work assignments in a state; location of professional licenses; location of medical professionals, other healthcare providers, accountants and attorneys; club and/or organizational memberships and participation; and telephone and/or other utility usage over a duration of time.

1. Home Ownership and Rental Agreements.

Plaintiff did not have any residence in Chicago (although he admittedly did own a condominium in which he did not reside).

The ALJ concluded that Plaintiff had an interest in the property at 1455 East 55th Street, Chicago, Illinois 60615 (“55th Street property”). At the hearing, the Department introduced a Quitclaim Deed, signed by Katherine Prince, purportedly conveying her interest in the 55th Street property to Plaintiff on June 1 of 2001. However, there was testimony that Plaintiff never

lived at the 55th Street property after 2001. In fact, the Quitclaim Deed was not notarized or sealed by the Cook County Recorder of Deeds until September 15, 2003. Additionally, evidence was presented that Ms. Prince remained liable for the mortgage of the property until 2003.

The State took the position that Plaintiff had an interest in property located at 1529 South State Street, Chicago, Illinois 60605 ("State Street property"). However, Plaintiff submitted evidence that the State Street property was not constructed until 2002. Plaintiff brought in Howard Ankin, the property owner, to testify that he bought the property in 2002 and Jody Hill, Plaintiff's assistant, was his first tenant. Additionally, Plaintiff submitted letters from 2003 which informed him that he could not be reached at that address and that the property had sustained extensive water damage and had no electricity. According to Plaintiff, these bolster the fact that he did not live there. While there were some documents addressed to Plaintiff at the State Street property, the Court finds that the evidence clearly requires a conclusion that Plaintiff did not live in the State Street property in 2002 or 2003.

The other property that Plaintiff had some relationship to in Illinois was the Crosby property. In the Notice of Proposed Deficiency, the IDOR claimed their finding that Plaintiff was an Illinois resident was based on the determination that Plaintiff never gave up his Illinois residence at the Crosby property. Plaintiff responded by providing evidence that the Crosby Property was not constructed until 2004. The Department responded by arguing the Crosby Property evidences the facts that Plaintiff never intended to abandon his Illinois domicile because he returned to it in December of 2004.

Plaintiff also leased the Miami property in June 2002. In December 2002, the IDOR sent correspondences to Plaintiff at his Miami Beach address informing him about the overpayment

of his 2001 state income tax. Additionally, Plaintiff purchased Indiana property in 2003 and an undeveloped residential property in Lake Lucy, Florida sometime in 2002.

2. Driver's License And Voter's Registration

Plaintiff established that he obtained both a Florida Driver's License and a Florida Voter's Registration Card using his parents' Cocoa Beach address on December 26, 2002. Plaintiff surrendered his Illinois Driver's License to the State of Florida on January 10, 2003.

3. Club and/or Organizational Memberships and Participation

The ALJ concluded that Plaintiff did not establish that he had any Florida club or organizational memberships in 2002. The Court agrees. There is nothing in the record that shows Plaintiff had any Florida club or organizational memberships in 2002.

4. Filing An Income Tax Return As Resident Of Another State

Both Plaintiff and Mr. Juraska testified that, under Florida law, the only tax return Plaintiff was required to file in Florida was the Florida Intangible Tax. The Florida Intangible Tax taxes, as of January 1, a Florida resident on the intangible assets that he owns, manages or controls as of January 1. Fla. Stat. Ch. 199, sec. 1999.012. Plaintiff testified that he did not intend to move to Florida until March 2002 so that he would not have been subject to Florida's Intangible Tax for 2002.<sup>4</sup> Plaintiff did file a 2002 Illinois income tax return, as a non-resident, on or about October 14, 2003.

5. Telephone and/or Utility Usage Over Duration Of Time

Plaintiff argues that he established telephone service at the Miami Beach address by two Sprint phone bills that were mailed to Plaintiff at that address. (Taxpayer Ex. 8).

6. Location Of Doctors, Dentists, Accountants And Attorneys

---

<sup>4</sup> Plaintiff had previously testified that he first moved to his parents' Cocoa Beach address in Florida in December of 2001, where he resided until moving in to the Miami Beach address.

Plaintiff acknowledged that he continued to use the services of an Illinois CPA and the Goldman Sachs office located in Chicago based upon long standing relationships. The testimony of Plaintiff and Mr. Juraska established that their relationship did not commence until the middle of 2001 and Mr. Juraska did not prepare Plaintiff's 2001 returns. Their transactions occurred in 2002.

7. Bank Accounts

Plaintiff did close one of his Illinois bank accounts in 2002. Plaintiff did open a Bank of America account in Florida in June of 2002.

8. Mailing Address

Plaintiff did receive mail at the Miami Beach address in 2002 but found it meager not only for the tax year but when compared to Plaintiff's assertion that there is a "volume of correspondence" and "large number of correspondence" that was addressed to him in Florida. However meager the amount of mail provided may have been, there was no contrary evidence submitted by the Department.

9. Business Interests

Plaintiff provided documentation to show his partnership interest in Charlestown, LLC, an Illinois business. Plaintiff was a passive investor with a 1.39% interest. The ALJ found this to be more important. Plaintiff also operated Sweeny Capital, LLP, which was created on December 16, 2002 with its registered office in Delaware. Plaintiff provided testimony and documentary evidence regarding the formation of the business (Taxpayer Ex. No. 12), his management of its operations (Taxpayer Ex. No. 16, 28) and his direction of its trading activities. (Taxpayer Ex. 17, 28).

Plaintiff also documented work for Illinois businessman John Stafford, Jr. and the Chicago office of TD Equity, both of which withheld Illinois income tax from Plaintiff in 2002.

Additionally, in December of 2002, Plaintiff established two trusts which identified him as being “of Miami Beach, Florida.”

**B. ACTUAL ABANDONMENT OF FIRST RESIDENCE**

Plaintiff testified that he abandoned his Illinois residence. His un rebutted testimony is that he moved to Florida to live with his parents and then rented a place in Miami Beach. His voting record and driver’s license support these assertions.

There is no evidence that maintained any residence in Illinois. Indeed, the State’s assertion that he resided at the Crosby address was plainly incorrect. Crosby was not built until 2004 and was never Sweeney’s residence during the 2002 and 2003 period.

**C. INTENTION NOT TO RETURN TO THE FIRST DOMICILE**

Plaintiff testified that he did not intend to return to Illinois as his domicile. Indeed the facts support this testimony. While Sweeney admitted to having periodic employment responsibilities in Chicago, he testified that he purchased a home in Indiana so as to not risk re-establishing an Illinois residency. Moreover, when Sweeney did rent the Crosby property the lease term coincided with his employment responsibilities. The Court finds this is a demonstration that the Crosby property not become an Illinois residence. See Maksym v. Bd. of Election Comm’rs, 242 Ill. 2d 303, 328 (Ill. 2011) (the fact that the ending dates of the lease terms for the Woodley House and the Hermitage House were identical, showed that the candidate[’s intent]”).

**D. AN INTENTION OF MAKING THE LAST-ACQUIRED DOMICILE A  
PERMANENT HOME**

Finally, Sweeney demonstrated that he intended to make Florida his new home. From 2002 forward his ties to the State of Florida not only remained, but flourished:

- Florida Real Estate Tax Statements for 2007 and 2008 for four Florida condominiums owned by Plaintiff (Taxpayer Ex. 51, 58, 67, 68);
- Utility Bills for the listed properties after 2006 (Taxpayer Ex. 40, 41, 59);
- Bank Statements showing the maintenance of bank accounts in Florida for the years 2007 and 2008 (Taxpayer Ex. 52, 66);
- Florida Intangible Income Tax Returns for 2005 (Taxpayer Ex. 37);
- Documents relating to the registration and maintenance of an automobile in Florida for 2007 (Taxpayer Ex. 49-50);
- Documents relating to the registration and maintenance of a boat in Florida in 2005 (Taxpayer Ex. 34, 35, 36, 38, 55, 56);
- Florida Five-Year Fishing License (Taxpayer Ex. 39);
- Documents evidencing yacht club membership in Florida (Taxpayer Ex. 47);
- Documents showing continued mail delivery in Florida (Taxpayer Ex. 33, 37, 38, 40, 50, 51, 52, 55, 59, 66); and
- Plaintiff's 2002 Form W-1099, which allegedly evidences the vast majority of the income he earned in 2002 was while working as an independent contractor in Florida. (Taxpayer Ex. 81)

The Court finds the facts of this case to be similar to those in *Cain v. Illinois Dep't of Revenue*, 975 N.E.2d 321, (1st Dist. 2012). There, as here, plaintiffs spent time in, and had contacts with, both Illinois and Florida. The court in *Cain* stated that, because the plaintiffs split

their time roughly equally between Illinois and Florida, the court had to rely on the concept of domicile as an intended permanent home. *Id.* at 326. Importantly, the court noted that although they maintained contacts with Illinois, plaintiffs had changed their voter registrations to Florida and obtained drivers' licenses in Florida. *Id.* Additionally, while plaintiffs maintained their business and professional ties with Illinois, they had begun to distance themselves from business interests and developed new ties with Florida professionals. *Id.* at 328. The court noted that the "balance of [the] factors leads [the court] to conclude that, for purposes of the Act, the plaintiffs were residents of Florida, and not Illinois, during the relevant time period." *Id.* at 329. In the present case, the Court finds that the balance of the factors weighs in Plaintiff's favor. While Plaintiff had ties with both Illinois and Florida, the majority of those ties began to shift towards Florida in 2002. Plaintiff did still maintain ties with, and spend time in, Illinois. However, the factors support the conclusion that Plaintiff abandoned his Illinois domicile and intended Florida to be his permanent home in 2002.

### CONCLUSION

For the foregoing reasons, the Court finds that the Department's decision that Plaintiff was domiciled in Illinois during the relevant time period of 2002 and 2003 was clearly erroneous and its decision is reversed.

**Judge Patrick J. Sherlock**

JUN 26 2013

Circuit Court – 1942

ENTERED: \_\_\_\_\_

Judge Patrick Sherlock