

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

Michael Rothman and Jennifer Rothman,)	
Petitioners,)	
)	
v.)	18-TT-30
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Brian Barov
Respondent.)	Administrative Law Judge
)	

NOTICE OF FILING

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The undersigned representative for the Illinois Department of Revenue (the “Department”) certifies that, on October 3, 2019, she filed the **Department’s Answer to Petitioner’s First Amended Petition** with the Illinois Independent Tax Tribunal.

/s/ Valerie A. Puccini
Valerie A. Puccini

CERTIFICATE OF SERVICE

The undersigned representative for the Illinois Department of Revenue certifies that, on October 3, 2019, she served the **Department’s Answer to the Petitioner’s First Amended Petition** filed with the Illinois Independent Tax Tribunal on the individuals identified above, at the email addresses shown above.

/s/ Valerie A. Puccini
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CHICAGO, ILLINOIS**

Michael Rothman and Jennifer Rothman,)	
Petitioners,)	
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v.)	18-TT-30
)	
ILLINOIS DEPARTMENT OF REVENUE,)	TYE: 12/31/2014 and 12/31/2015
Respondent.)	

DEPARTMENT’S ANSWER TO PETITIONERS’ FIRST AMENDED PETITION

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorneys, Susan Budzileni and Valerie A. Puccini, and for its Answer to Petitioners’ First Amended Petition respectfully states as follows:

Nature of the Action

1. Petitioners contest the finding that they were residents of Illinois for income tax purposes for the 2014 and 2015 tax years, and further contest the penalties assessed in the NOD attached as **Exhibit 1** to this Amended Petition.

ANSWER: The Department admits that Petitioners are contesting the Department’s finding/determination that they were residents of Illinois for income tax purposes for the 2014 and 2015 tax years as set forth in the Department’s January 18, 2018, Notices of Deficiency (“NOD”). The Department admits that Petitioners are contesting the assessment of penalties as set forth in Count III of Petitioner’s First Amended Petition.

Parties

2. Michael and Jennifer are individuals married to each other who, for each tax year at issue, jointly filed a personal Illinois non-resident individual income tax return and paid tax due to Illinois on taxable income therein reported.

ANSWER: Based on the information and belief, the Department admits that Michael and Jennifer are individuals married to each other. The Department admits that Michael and

Jennifer filed an Illinois individual income tax returns for 2014 and 2015 with the filing status of married filing jointly and that they filed a Schedule NR and paid the self-assessed income tax due as reported. The Department states that the Illinois income tax return speaks for itself.

3. The Illinois Department of Revenue is the Illinois agency charged with the administration and enforcement of the Illinois Tax Act.

ANSWER: Department admits the factual allegations contained in Paragraph 3.

Jurisdiction

4. This petition is timely filed within 60 days of the issuance of the two NOD's attached hereto as **Exhibit 1**, arising from the same audit, the sum liability total of which is in excess of \$15,000.00 in penalty and interest assessed for the two years included in a single audit.

ANSWER: The allegation in paragraph 4 is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). However, the Department admits Petitioners timely filed their petition with the Illinois Tax Tribunal.

5. Petitioners accept the Tax Tribunal's designation of its office in Cook County as the venue in which to conduct the hearing in this matter.

ANSWER: The allegation in paragraph 5 is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

Allegations Common to All Counts

6. Michael and Jennifer were married in 1981.

ANSWER: Based upon information and belief, the Department admits that Michael and Jennifer are married. The Department lacks sufficient information to either admit or deny whether Michael and Jennifer were married in 1981.

7. During the course of their marriage, Petitioners raised four children.

ANSWER: The Department lacks sufficient information to either admit or deny the factual allegations in paragraph 7.

8. From the birth of their first child in 1985, to the year in which their fourth and youngest child graduated from high school in 2010, Petitioners lived in and around the City of Chicago, Illinois.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 8 regarding Petitioners' children. However, the Department admits that Petitioners lived in and around the City of Chicago, Illinois.

9. At all subsequent times relevant hereto, Petitioners' children have been adults, attending college and pursuing their careers within and without Illinois

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 9.

10. Petitioners have not claimed a homestead tax exemption on any real property In Illinois since their move to the City of Chicago.

ANSWER: Department admits that Petitioners did not claim a homestead (property tax credit) on any real property in Illinois during tax years at issue on their 2014 and 2015 Illinois Individual Income Tax Returns. Department lacks sufficient information to either admit or deny the factual allegations regarding Petitioners' move to the City of Chicago in paragraph 13 and demands strict proof thereof.

11. During the tax years at issue, and at all other times relevant hereto, Petitioners have neither owned nor leased any vehicles registered in their name in Illinois, with the exception of one 1970 General Motors vehicle with "Antique" license plates.

ANSWER: The Department denies that Petitioners have neither owned nor leased any vehicles registered in their name in Illinois, with the exception of one 1970 General Motors vehicle with "Antique" license plates. Department states that its auditor, during the audit, discovered Michael Rothman is the registered owner of a 2010 Lexus ES 350 and the vehicle's registration was renewed on July 15, 2016 with an address of 840 N. Lake Shore Drive, Unit 101, Chicago, IL 60611.

12. Michael has traveled to Florida every year since he was 16 years of age.
ANSWER: Department states that the statement contained in Paragraph 12 is conclusory. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 12 and demands strict proof thereof.

13. Since the 1990's, Michael's mother has been domiciled in and a resident of Florida.
ANSWER: Department states that the statement contained in Paragraph 13 is conclusory. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 13 and demands strict proof thereof.

14. Beginning in February 2010, through a lease by Jennifer, Petitioner had a condominium residence in Miami, Florida.
ANSWER: The Department objects to the term "condominium residence" as vague and ambiguous. Department admits that Petitioners tendered a copy of a fully executed rental lease agreement for the term 3/1/2010 through 3/1/2011 that had a lease execution date of 2/25/2010 to the Department's auditor during the audit. Department denies any remaining factual allegations contained in Paragraph 14.

15. In February of 2013, Jennifer renewed and amended the lease of the condominium in Miami, Florida.
ANSWER: The Department objects to the term "condominium residence" as vague and ambiguous. Department admits that Petitioners tendered a copy of a partially executed rental lease renewal agreement for the term 3/1/2013 through 2/28/2014 to the Department's auditor during the audit. Department denies that the partially executed renewed and amended lease agreement documents that the rental lease agreement was renewed and demands strict proof thereof. Department denies any remaining factual allegations contained in Paragraph 15.

16. In November of 2013, Michael purchased a penthouse unit in Miami, Florida.
ANSWER: Department admits that Petitioners tendered a partially executed document titled "AS IS" Residential Contract for Sale and Purchase for real property in Miami,

Florida signed by Michael Rothman on 11/5/2013 to the Department's auditor during the audit. Department denies that this partially executed sales contract sufficiently documents that Michael Rothman purchased the real property identified in the partially executed sales contract. Department lacks sufficient information to either admit or deny any remaining factual allegations in paragraph 16 and demands strict proof thereof.

17. In 2016, through a wholly-owned entity, Petitioners purchased another condominium in Miami, Florida for investment purposes.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 17 and demands strict proof thereof.

18. Petitioners have during the tax years at issue claimed a homestead exemption on their residence in Miami, Florida, as actual, and officially domiciled, residents of Florida.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 18 and demands strict proof thereof.

19. Since at least 2013, Michael and Jennifer have held voter registration cards in Miami, Florida.

ANSWER: The Department objects to the term "since" as vague and ambiguous. Department admits that Petitioners submitted a copy of their voter registration card to the Department's auditor during the audit. The Department admits that Petitioners registered to vote in Miami-Dade County on 12/23/2013. The Department admits that Jennifer Rothman was issued a voter's registration card on 7/21/2014 and Michael Rothman was issued a voter's registration card on 6/20/2014 by Miami-Dade County. Department denies any remaining allegations contained in Paragraph 19.

20. Since at least 2013, Michael and Jennifer have held Florida driver licenses.

ANSWER: The Department objects to the term "since" as vague and ambiguous. Department admits that Petitioners submitted a copy of their Florida driver's license to the Department's auditor during the audit. The Department admits that the State of Florida

issued a driver's license to each Michael Rothman and Jennifer Rothman on 12/23/2013. Department denies any remaining allegations contained in Paragraph 20.

21. During the tax years at issue, and at all times relevant hereto, Petitioners have had multiple vehicles registered in their name in Florida, valued in dollars at several hundred thousand.

ANSWER: Department admits that Petitioners submitted a copy of one (1) Florida Certificate of Title for a 2007 Ferrari. Department denies that Petitioners submitted more than one Certificates of Title for multiple vehicles registered in their name in Florida. Department lacks insufficient information to admit or deny whether the 2007 Ferrari is valued in dollars at several hundred thousand.

22. During the tax years at issue, and at all times relevant hereto, Petitioners maintained a 58-foot boat and a 77-foot boat registered in their name in Florida.

ANSWER: The Department admits that Petitioners tendered a bill of sale for a vessel with Hull number IT-GOB8C012A212 identifying the buyer as Carpe Diem Seize the Day LLC to the Department's auditor during the audit. The Department denies that, during the tax years at issue, and at all times relevant hereto, Petitioners maintained a 58-foot boat and a 77-foot boat registered in their name in Florida and demands strict proof thereof.

23. Since at least October 2011, Michael has held a license for Dockage Space at the Miami Beach Marina for a vessel owned by a limited liability company wholly owned by Michael.

ANSWER: The Department objects to the term "since" as vague and ambiguous. Department denies that the documents Michael Rothman submitted to the Department's auditor during the audit document/demonstrate that the identified vessel is owned by a limited liability company that is wholly owned by Michael. The Department admits that during the audit a document entitled Certificate of Documentation was tendered to the auditor identifying a vessel named "Carpe Diem" with IMO or other number as GOB8C012A212 which is a partial number of the Hull number identified above in paragraph 22, with official number 1239030 and the owners of the vessel being identified as Carpe Diem Seize the Day LLC. The Department admits that Petitioners during the audit tendered document that appear to be an auto-pay and e-billing authorization, dockage

license agreement and addendum to license agreement for dockage space dockage fee for a vessel named "Carpe Diem" which from the documents identified in paragraphs 22 and 23, said vessel "Carpe Diem" is owned by Carpe Diem Seize the Day LLC. The Department lacks sufficient information to either admit or deny the remaining factual allegations in paragraph 23 and demands strict proof thereof.

24. In October 2013, Petitioners purchased a large home in Aspen, Colorado.

ANSWER: The Department objects to the term "large" as vague and ambiguous. Department admits that Petitioners submitted a document titled Counter Proposal for real property in Aspen, Colorado to the Department's auditor during the audit. However, said counter proposal is not fully executed, it is not a sales contract and it does not document the purchase of real property in Aspen, Colorado. Department lacks sufficient information to either admit or deny any remaining factual allegations in paragraph 24 and demands strict proof thereof.

25. Since 2013 and at all times relevant hereto, Petitioners have kept several vehicles registered in their name in Colorado.

ANSWER: The Department objects to the term "kept" as vague and ambiguous. The Department states that its auditor found information regarding a vehicle registered to SMS Assist, LLC with a registration in the State of Colorado. Department lacks sufficient information to either admit or deny the allegations in Paragraph 25 that Petitioners kept several vehicles registered in their name in Colorado and demands strict proof thereof.

26. Since at least 2012 and at all times relevant hereto, Petitioners, through a wholly owned limited liability company, have owned two passenger jet aircraft which are hangered and maintained in Wisconsin.

ANSWER: Department admits that Petitioners, through a wholly owned limited liability company, have owned one (1) passenger jet aircraft which are hangered and maintained in Wisconsin. Department lacks sufficient information with respect to whether Petitioners own a second aircraft and demands strict proof thereof.

27. Since at least 2012, and at all times relevant hereto, Petitioners, through a wholly owned limited liability company, have employed pilots to operate the two passenger jet aircraft hangered and maintained in Wisconsin.

ANSWER: The Department objects to the term “since” as vague and ambiguous. Department admits that Petitioners, during the audit, submitted flight logs for aircraft with Tail Numbers N900MJ and N840JM, but they did not tender any manifests as requested by the Department’s auditor. Petitioner did not submit any employment contracts for pilots and did not submit any documentation documenting that the two aforementioned air crafts are hangered and maintained in Wisconsin. Department lacks sufficient information to either admit or deny the remaining factual allegations in paragraph 27 and demands strict proof thereof.

28. Since at least 2012, Petitioners have incurred and paid Wisconsin Use Tax on each personal use of the aircraft, including on any flights to and from Florida.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 28 and demands strict proof thereof.

29. During the tax years at issue Michael spent approximately 220 days per year outside of Illinois.

ANSWER: Department states that its auditor requested Petitioners to identify the days (by dates) that each Petitioner arrived in or departed from Illinois and Florida. Department denies that its auditor received said information from Petitioners. Therefore, Department has insufficient information to admit or deny the factual allegations in Paragraph 29 and demands strict proof thereof.

30. Since approximately 2004 and at all times relevant hereto, among other businesses, Michael and Jennifer purchased a chemical distribution business, based in West Palm Beach, Florida. Michael has been the manager of the business, and as with his other businesses, extensive travel has also been required of him by this Florida business.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 30 and demands strict proof thereof.

31. Michael and Jennifer, indirectly, have also recently founded a new business in Tampa, Florida.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 31 and demands strict proof thereof.

32. As a nonresident of Illinois, and not being the recipient of income from Illinois sources, for the tax year 2013 Jennifer did not file an Illinois income tax return.

ANSWER: The Department admits that for tax year 2013, Jennifer did not file an Illinois Individual Income Tax Return. The Department states that tax year 2013 is not a part of this protest and for purposes of this Answer is not relevant. To the extent an answer is required, the Department lacks sufficient information to determine whether Jennifer was a nonresident of Illinois for tax year 2013. To the extent an answer is required, the Department further states that it lacks sufficient information to determine whether Jennifer did not receive income from Illinois sources.

33. As a non-resident of Illinois, and being a recipient of income from Illinois sources, for the 2013 tax year Michael filed an Illinois non-resident return and paid tax on the income reported to Illinois.

ANSWER: The Department admits that Michael Rothman filed a 2013 Illinois Individual Income Tax Return and states that Michael's 2013 Illinois Individual Income Tax Return speaks for itself.

34. For the 2014 tax year, as nonresidents of Illinois, Michael and Jennifer filed a nonresident joint Illinois income tax return and paid \$54,345 in tax due to Illinois, at the then applicable 5% tax rate for individuals.

ANSWER: The Department admits that Michael and Jennifer filed a 2014 Illinois Individual Income Tax Return and that it speaks for itself.

35. For the 2015 tax year, as nonresidents of Illinois, Michael and Jennifer filed a nonresident joint Illinois income tax return and paid \$43,725 in tax due to Illinois, at the then applicate

3.75% tax rate for individuals. In February 2017, Michael and Jennifer received a Notice of Audit Initiation from the Department for the 2014 and 2015 tax years.

ANSWER: The Department admits that Michael and Jennifer filed a 2015 Illinois Individual Income Tax Return and that it speaks for itself. The Department admits that it issued the first Notice of Audit Initiation for tax years 2014 and 2015 was issued on February 27, 2017. The Department states that a second Notice of Audit Initiation for tax years 2014 and 2015 was issued and sent on May 23, 2018. The Department admits that a Notice of Audit Initiation was sent from the Department for the 2014 and 2015 tax years.

36. After complying with all Department document and information requests, in October 5, 2017, the Department's auditor issued an IL-1040 Auditor's Report for the 2014 tax year showing that in the "As Filed" column of the report Michael and Jennifer had a "Filing Status" of "2 Married Jnt Rtn", which status they maintained in the "As Corrected" column, together with Notices of Proposed Deficiency which provided for a 60-day period to request review by the Informal Conference Board, an intermediate discretionary review available before the conclusion of an audit and before the issuance of formal assessments. See Exhibit 2.

ANSWER: Department denies that Petitioners complied with all document and information requests issued by the Department's auditor. Department states that Petitioner failed to attach its Exhibit 2. The Department admits that it issued an IL-1040 Auditor's Report for the 2014 tax year and states that the report speaks for itself. The Department denies the remaining factual allegations contained in Paragraph 36.

37. The IL-1040 Auditor's Report for the 2014 tax year showed in the "Residency Code," in the "As Filed" column, that they were "2 Non-Resident" but in the "As Corrected Column" they were "1 Resident."

ANSWER: The Department admits that it issued an IL-1040 Auditor's Report for the 2014 tax year and states that the report speaks for itself.

38. The IL-1040 Auditor's Report for the 2014 tax year, in the "Net Change" Column showed an amount of additional "net Taxable Income" of \$742,922, with additional tax due of

\$37,146, interest of \$3,458, a negligence penalty of \$7,429, and a late payment penalty of \$5,382.

ANSWER: The Department admits that it issued an IL-1040 Auditor's Report for the 2014 tax years and states that the report speaks for itself.

39. After complying with all Department document and information requests, the Department's auditor issued an IL-1040 Auditor's Report for the 2015 tax year showing that in the "As Filed" column of the report Michael and Jennifer had a "Filing Status" of "2 Married Jnt Rtn", which status they maintained in the "As Corrected" column.

ANSWER: Department denies that Petitioners complied with all document and information requests issued by the Department's auditor. The Department admits that it issued an IL-1040 Auditor's Report for the 2015 tax year and states that the report speaks for itself. The Department denies the remaining factual allegations contained in Paragraph 39.

40. The IL-1040 Auditor's Report for the 2015 tax year showed in the "Residency Code," in the "As Filed" column, that they were "2 Non-Resident" but in the "As Corrected Column" they were "1 Resident."

ANSWER: The Department admits that it issued an IL-1040 Auditor's Report for the 2015 tax year and states that the report speaks for itself.

41. The IL-1040 Auditor's Report for the 2015 tax year, in the "Net Change" Column showed an amount of additional "Net Taxable Income" of \$494,027, with additional tax due of \$18,526, interest of \$766, a negligence penalty of \$3,705, and a late payment penalty of \$1,821.

ANSWER: The Department admits that it issued an IL-1040 Auditor's Report for the 2015 tax year and states that the report speaks for itself.

42. Considering the amount of additional tax, interest and penalty proposed for assessment[s] 2014 and 2015, relative to the cost of litigating the issue of Michael's residency, on October 27, 2017, through different counsel, Michael and Jennifer chose to petition the auditor to

abate the penalties assessed on the basis of reasonable cause regarding the residency determination, and to allow the period for informal protest to close without protest.

ANSWER: Department admits that Petitioners former counsel requested an abatement of penalties. The Department denies Petitioners' request for abatement of penalties contained facts demonstrating reasonable cause. Department states that Petitioners former counsel submitted Petitioners' payment of the tax liability and accrued interest to the Department. Department states that the remaining statements contained in paragraph 42 are conclusory and are not material allegations of fact. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 42 and demands strict proof thereof.

43. On November 27, 2017, within days of the close the informal protest period for 2014 and 2015, the auditor provided Michael and Jennifer with a Notice of Audit Results for 2014 and 2015, setting forth the previously communicated amounts of additional tax, penalties and interest, unchanged.

ANSWER: The Department admits that it issued a Notice of Audit Results for 2014 and 2015 and states that the notice speak for themselves.

44. On November 30, 2017, Michael and Jennifer, through their then counsel, tendered payment of tax and interest for 2014 and 2015 but refused to sign the IL-870 form to preserve their right to protest the penalty amounts.

ANSWER: Department admits that Michael and Jennifer tendered the payment of tax and interest in the amount of \$52,242 for 2014 and 2015 and that the Petitioners' then counsel's November 30, 2017, letter speaks for itself.

45. On January 18, 2018, the Department issued the Notices of Deficiency for 2014 and 2015, including the penalty amounts, which are the subject of this action.

ANSWER: The Department admits the factual allegations contained in Paragraph 45 and the Notices speak for itself.

COUNT I

2014 Tax Year

46. Petitioners by this reference incorporate and re-allege paragraphs 1 through 45 hereof as though fully set forth in this Count I.

ANSWER: Department restates and incorporates its Answers to paragraphs 1 through 45 as if fully set forth herein.

47. The IITA defines the word “reside” as “as individual (i) who is in this state for other than a temporary or transitory purpose during the taxable years; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year.” 35 ILCS 5/1501(a)(20)(A).

ANSWER: Department admits the existence, force and effect of the Illinois Income Tax Act (35 ILCS 5) and the Income Tax Act speaks for itself.

48. “If individuals leave the state for other than a temporary or transitory purpose, or establish domicile elsewhere, they cease to be Illinois residents. 35 ILCS 5/1501(a)(17).” *Cain v. Hamer*, 2012 Ill. App. (1st) 112833, ¶ 16.

ANSWER: Department admits the existence, force and effect of the Illinois Income Tax Act (35 ILCS 5) and the Income Tax Act speaks for itself. Department also admits the existence, force and effect of case law speaks for itself.

49. As of at least 2010, Michael and Jennifer had left Illinois for other than temporary or transitory purposes.

ANSWER: The Department states that the statements contained in paragraph 49 are conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required.

50. As of at least 2011, Jennifer had established domicile in Florida.

ANSWER: The Department states that the statements contained in paragraph 50 are conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no

answer is required. To the extent an answer is required, the Department denies Jennifer established domicile in Florida as of at least 2011.

51. As of at least 2013, Michael had established domicile in Florida.

ANSWER: The Department states that the statement contained in paragraph 51 is conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, the Department denies the factual allegations contained in paragraph 51.

52. Since at least 2011, Michael and Jennifer have been in Florida for other than temporary or transitory purposes and have been non-residents of Illinois for purposes of the IITA.

ANSWER: The Department states that the statements contained in paragraph 52 are conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, the Department denies the factual allegations contained in paragraph 52.

53. Effective April 19, 2013, after the Department lost multiple attempts to assert residency positions in *Cain v. Hamer*, 2012 Ill. App. (1st) 112833 and at least two other unpublished decisions from the Appellate Court's First and Second Districts, and there being no amendment to the IITA definition of the terms "resident", "non-resident" or "part-year resident", the Department amended Section 100.3020 of the Department's IITA regulations, in pertinent part, as follows:

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

1) An individual receiving a homestead exemption (see 35 ILCS 200/15-174) for Illinois property is presumed to be a resident of Illinois.

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

37 Ill. Reg. (Issue 18) 5823, May 3, 2013 (eff. April 19, 2013)[.]

ANSWER: Paragraph 53 contains no material allegations of fact, therefore, pursuant to Rule 310(b)(2) no answer is required. Department admits the existence, force and effect of its Illinois Administrative Rules and any case law and states that they speak for themselves.

54. Without any support in case law or a statutory change so authorizing, the Department unilaterally changed the evidentiary standard of proof to overcome a presumption of residency from “satisfactory evidence” to “clear and convincing evidence” for tax years to which the 2013 amendment is applicable.

ANSWER: The Department states that the statements contained in paragraph 54 are legal conclusions, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department denies the factual allegations contained in paragraph 54.

55. Michael and Jennifer had a preponderance of evidence and at a minimum, more than “satisfactory evidence,” to overcome the regulatory presumption for taking Illinois non-resident positions for 2013, 2014, 2015, and 2016 tax years.

ANSWER: Paragraph 55 contains legal conclusions, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department denies the factual allegations contained in paragraph 55. Additionally, the Department states that tax years 2013 and 2016 are not part of this protest and therefore are not relevant for purposes of this Answer. To the extent an answer is required, Department denies the factual allegations contained in paragraph 55.

56. Michael and Jennifer did not claim an Illinois homestead exemption on any Illinois property in 2013, 2014, 2015 and 2016.

ANSWER: The Department admits that the Michael and Jennifer did not claim a homestead (property tax credit) on any real property in Illinois during tax years at issue on

their 2014 and 2015 Illinois Individual Income Tax Returns. In addition, the Department states that tax years 2013 and 2016 are not part of this protest and therefore are not relevant for purposes of this Answer.

57. Jennifer was a nonresident of Illinois for 2011 and 2012 and she was therefore not presumed under the regulation to be a resident of Illinois in 2013, without regard to the number of days that she was present in Illinois relative to any other state.

ANSWER: Paragraph 57 contain legal conclusions, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department states that tax years 2011 and 2012 are not a part of this protest and therefore are not relevant for purposes of this Answer. To the extent an answer is required, the Department denies that Jennifer was a nonresident of Illinois for 2011 and 2012. Additionally, to the extent an answer is required, Department admits the existence, force and effect of the Illinois Administrative Rules.

58. Michael was a nonresident of Illinois for 2011 and 2012 and he was therefore not presumed under the regulation to be a resident of Illinois in 2013, without regard to the number of days that he was present in Illinois relative to any other state.

ANSWER: Paragraph 58 contains legal conclusions, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department states that tax years 2011 and 2012 are not a part of this protest and therefore are not relevant for purposes of this Answer. To the extent an answer is required, the Department denies that Michael was a nonresident of Illinois for 2011 and 2012. To the extent an answer is required the Department states that the Illinois Administrative Rules speak for themselves.

59. Accordingly, Petitioners were not residents of Illinois during the 2014 tax year.

ANSWER: Paragraph 59 contains legal conclusions, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, the Department denies that Petitioners were not residents of Illinois during the 2014 tax year.

COUNT II
2015 Tax Year

60. Petitioners by this reference incorporate and re-allege paragraphs 1 thorough 59 hereof as though fully set forth in this Count I.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 59 as if fully set forth herein.

61. Jennifer was a nonresident of Illinois for 2012 and 2013 and she was therefore not presumed under the regulation to be a resident of Illinois in 2014, without regard to the number of days that she was present in Illinois relative to any other state.

ANSWER: Paragraph 61 contains legal conclusions, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. Th Department states that tax years 2012 and 2013 are not a part of this protest and therefore not relevant for purposes of this Answer. To the extent an answer is required, the Department denies that Jennifer was a nonresident of Illinois for 2014. The Department admits the existence, force and effect of the Illinois Administrative Rules, which speak for themselves.

62. Michael was a nonresident of Illinois for 2012 and 2013 and he was therefore not presumed under the regulation to be a resident of Illinois in 2014, without regard to the number of days that he was present in Illinois relative to any other state.

ANSWER: Paragraph 62 contains legal conclusions, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. The Department states that tax years 2012 and 2013 are not a part of this protest and therefore not relevant for purposes of this Answer. To the extent an answer is required, the Department denies that Michael was a no resident of Illinois for 2014. The Department admits the existence, force and effect of the Illinois Administrative Rules, which speak for themselves.

63. Accordingly, Petitioners were not residents of Illinois during the 2015 tax year.

ANSWER: Paragraph 63 contains legal conclusions, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, the Department denies that Petitioners were not residents of Illinois during the 2015 tax year.

COUNT III

In the Alternative Reasonable Cause for Abatement of Penalties

64. Petitioners by this reference incorporate and re-allege paragraphs 1 through 63 hereof as though fully set forth in this Count I.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 63 as if fully set forth herein.

65. Section 3-8 of the Uniform Penalty and Interest Act (the "UPIA") provides that the penalties imposed under Section 3-[3], 3-4, 3-5 and 3-75 of the UPIA "shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause." 35 ILCS 735/3-8.

ANSWER: Paragraph 65 does not contain material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence force and effect of the UPIA and its corresponding Illinois Administrative Rules (86 Ill. Admin. Code § 700.100 et seq.), which speaks for themselves. Additionally, to the extent an answer is required, Department states that Petitioners failed to allege any facts upon which a reasonable cause determination can be made for the abatement of penalties.

66. Section 3-5 of the UPIA, dealing with a penalty for negligence, provides that "[n]o penalty shall be imposed under this Section if it is shown that the failure to comply with the tax is due to reasonable cause" and that "[a] taxpayer is not negligent if the taxpayer shows substantial authority to support the return as filed." 35 ILCS 735/-305(b).

ANSWER: Paragraph 66 does not contain material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required,

Department admits the existence force and effect of the UPIA. Additionally, to the extent an answer is required, Department states that Petitioners failed to allege any facts upon which a reasonable cause determination can be made for the abatement of penalties.

67. Section 700.400 of the Department's regulations administering the Uniform Penalty and Interest Act (35 ILCS 735/3-1, et seq.), provide that "the penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of the Act shall not apply if the taxpayer shows that his failure to file a return or to pay tax at the required time was due to reasonable cause." 86 Ill. Admin. Code § 700.400(a).

ANSWER: Paragraph 67 does not contain a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence force and effect of the UPIA and its corresponding Illinois Administrative Rules (86 Ill. Admin. Code § 700.100 et seq.). Additionally, to the extent an answer is required, Department states that Petitioners failed to allege any facts upon which a reasonable cause determination can be made for the abatement of penalties.

68. "Reasonable cause shall be determined in each situation in accordance with this Section. (Section 3-8 of the Act)." 86 Ill. Admin. Code § 700.400(a). Therefore, "the determination of whether a taxpayer acted with reasonable cause shall be made on a case-by-case basis" and "the most important factor in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion." 86 Ill. Admin. Code § 700.400(b).

ANSWER: Paragraph 68 does not contain a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence force and effect of its Illinois Administrative Rules (86 Ill. Admin. Code § 700.100 et seq.). Additionally, to the extent an answer is required, Department states that Petitioners failed to allege any facts upon which a reasonable cause determination can be made for the abatement of penalties.

69. Among the factors upon which a determination of reasonable cause depends is the taxpayer's exercise of "ordinary business case and prudence" which in turn takes into account "the clarity of the law or its interpretation." 86 Ill. Admin. Code § 700.400(c). Among the examples of such instances is a circumstance where an "Illinois appellate court decision . . . which supports the taxpayer's position" and which "will ordinarily provide a basis for a reasonable cause determination." 86 Ill. Admin. Code § 700.400(e)(8).

ANSWER: Paragraph 69 does not contain a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence force and effect of its Illinois Administrative Rules (86 Ill. Admin. Code § 700.100 et seq.). Additionally, to the extent an answer is required, Department states that Petitioners failed to allege any facts upon which a reasonable cause determination can be made for the abatement of penalties.

70. The Department's loss of three appellate court cases where it asserted residency under the terms of its regulation prior to its amendment in 2013, which support Michael's and Jennifer's non-residency positions in the tax years at issue, and the Department's amendment of its residency regulation in mid-2013 without there being a statutory change to the IITA terms regarding residency, nonresidency and part-year residency, are factors affecting the "clarity of the law" which should have supported the Department's auditor abating the penalties, and indeed should have worked to stay his hand in imposing a negligence penalty at all.

ANSWER: Paragraph 70 does not contain a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence force and effect of its Illinois Administrative Rules (86 Ill. Admin. Code § 700.100 et seq.). Additionally, to the extent an answer is required, Department states that Petitioners failed to allege any facts upon which a reasonable cause determination can be made for the abatement of penalties.

71. Petitioners demonstrated reasonable cause justifying the abatement of penalties pursuant to 35 ILCS 735/3-5(b).

ANSWER: Paragraph 71 contains a legal conclusion, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence force and effect of the UPIA and its corresponding Illinois Administrative Rules (86 Ill. Admin. Code § 700.100 et seq.). Additionally, to the extent an answer is required, Department states that Petitioners failed to allege any facts upon which a reasonable cause determination can be made for the abatement of penalties.

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

- a. Denies each prayer for relief in Petitioners' Petition;
- b. Finds the Notices of Claim Denial are correct as issued;
- c. Orders judgment in favor of the Department and against Petitioners; and,
- d. Grants any further relief this Tribunal deems just and appropriate.

Respectfully submitted,
Illinois Department of Revenue

By:

/s/ Susan Budzileni

Dated: October 3, 2019

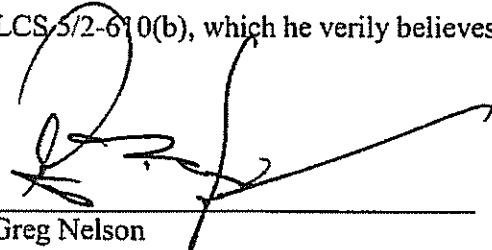
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Michael Rothman and Jennifer Rothman,
v.
Illinois Department of Revenue


DOCKET NO. 18-TT-30

VERIFICATION AND AFFIDAVIT AS TO LACK OF SUFFICIENT KNOWLEDGE

Greg Nelson, being first duly sworn, deposes and says that he is an employee and duly authorized agent of the Illinois Department of Revenue ("Department"), that he has read the foregoing Department's Answer to Petitioner's First Amended Petition, that he is well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, he certifies that the statements set forth in that instrument are true and correct, except as to allegations claiming lack of sufficient knowledge (Paragraphs 6 through 10, 12, 13, 16, 17, 18, 21, 23 through 32, 42) pursuant to 735 ILCS 5/2-610(b), which he verily believes to be true.



Greg Nelson
Revenue Auditor III
Illinois Department of Revenue


10/3/2019

