

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

Michael Rothman and Jennifer Rothman,)	
Petitioners,)	
)	
v.)	18-TT-30
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent.)	
)	

NOTICE OF FILING

TO: Michael J. Wynne	Douglas A. Wick
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The undersigned representative for the Illinois Department of Revenue (the "Department") certifies that, on March 8, 2019, she filed the Department's with the Illinois Independent Tax Tribunal.

/S. Budzileni/

Susan Budzileni
Special Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned representative for the Illinois Department of Revenue certifies that, on March 8, 2019, she served the Department's Answer on the individuals identified above, at the email addresses shown above.

/S. Budzileni/

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ANSWER TO PETITION

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

Nature of the Action

1. This petition concerns the claim by Illinois that the Family’s payment of Illinois income tax, as married nonresidents filing jointly for 2014 and 2015 calendar years, on income in an amount in excess of \$1 million and which represented approximately 60% of their total income as derived from Illinois sources, was not enough for Illinois. Instead, on the unsupported basis under the IITA that only Jennifer was a nonresident of Illinois, and only Michael was a resident of Illinois, the Department determined that the Family should jointly be assessed on 100% of their income from all sources, thus imposing tax, penalty and interest on the remaining 40% of the Family’s income

ANSWER: The allegations in paragraph 1 are not material allegations of fact and, therefore, pursuant to Rule 310(b)(2), no answer is required. The Department denies that its basis or determination finding Petitioners were residents of Illinois for tax years 2014 and 2015 is unsupported. The Department admits that Petitioners should be jointly assessed on 100% of their income from all sources, thus imposing tax, penalty and interest on the remaining 40% of the Petitioners’ income.

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 upon 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 return 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, which determined that one of the Family was an Illinois resident in each of the two tax years at issue here.

ANSWER: Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.), which is relevant to the legal claims raised in the Petition. The Notices of Deficiency speak for themselves.

Jurisdiction

4. This petition is timely filed within 60 days of the issuance of the two NOD [sic]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 5 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. The Family accepts 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

The Family in Illinois

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 that Michael and Jennifer were married in 1981.

7. During the course of their marriage, the Family 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, the Family 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. The Family's children first attended schools in Highland Park, and later in the City of Chicago, when the Family moved to the City from Highland Park around 2003 or 2004.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 9 and demands strict proof thereof.

10. At all subsequent times relevant hereto, the Family's 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 10.

11. Jennifer's parents are, and have at all relevant times resided as, tenants in Illinois property owned by the Family.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 11 and demands strict proof thereof.

12. After moving to the City of Chicago, the Family lived for several years in rental property, and ultimately in a condominium they purchased in 2003 and disposed of in 2018, which they presently occupy as tenants.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 12 and demands strict proof thereof.

13. The Family have not claimed a homestead tax exemption on any real property in Illinois since their move to the City of Chicago.

ANSWER: The Department admits that the Family 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 the Family's move to the City of Chicago in paragraph 13 and demands strict proof thereof.

14. The total fair market value of real estate owned by the Family in Illinois during the tax years at issue, and at all other relevant times, has not exceeded \$6 million.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 14 and demands strict proof thereof.

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

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 15 and demands strict proof thereof.

The Family Outside Illinois

16. Michael has traveled to Florida every year since he was 16 years of age.

ANSWER: The Department states that the statements contained in paragraph 16 are conclusory. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 16 and demands strict proof thereof.

17. Since the 1990's, Michael's mother has been domiciled in and a resident of Florida.

ANSWER: The Department states that the statements contained in paragraph 17 are conclusory. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 17 and demands strict proof thereof.

18. Since at least February 2010, through a lease by Jennifer, the Family had a condominium residence in Miami, Florida, at an initiation monthly rent of \$4,000.00.

ANSWER: The Department states that the statements contained in paragraph 18 are conclusory. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 18 and demands strict proof thereof.

19. Since at least February of 2013, Jennifer renewed and amended the lease of the condominium in Miami, Florida, at a monthly rent of \$4,600.00.

ANSWER: The Department states that the statements contained in paragraph 19 are conclusory. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 19 and demands strict proof thereof.

20. In November of 2013, Michael purchased a penthouse unit at the same address in Miami, Florida at which Jennifer leased a condominium residence for approximately \$1.9 million (approximately \$2.1 million, with improvements).

ANSWER: The Department states that the statements contained in paragraph 20 are conclusory. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 20 and demands strict proof thereof.

21. In 2016, through a wholly-owned entity, the Family purchased a condominium in Miami, Florida, for \$1.5 million, for investment purposes.

ANSWER: The Department states that the statements contained in paragraph 21 are conclusory. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 21 and demands strict proof thereof.

22. The Family 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 22 and demands strict proof thereof.

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

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 23 and demands strict proof thereof.

24. Since at least 2013, Michael and Jennifer have held Florida diver licenses.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 24 and demands strict proof thereof.

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

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 25 and demands strict proof thereof.

26. During the tax years at issue, and at all times relevant hereto, the Family had a 58-foot boat, valued at \$1.6 million, and a 77-foot boat, valued at \$4.5 million, registered in their name in Florida.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 26 and demands strict proof thereof.

27. 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: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 27 and demands strict proof thereof.

28. In October of 2013, the Family purchased a home in Aspen, Colorado, for approximately \$6.8 million (plus \$3.2 million in improvements).

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 28.

29. Since 2013 and at all times relevant hereto, the Family have had multiple vehicles registered in their name in Colorado, valued in dollars at several hundred thousand.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 29 and demands strict proof thereof.

30. Since at least 2012 and at all times relevant hereto, the Family, through a wholly owned limited liability company, have owned two passenger jet aircraft, hangered and maintained in Wisconsin.

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

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

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

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

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 32 and demand strict proof thereof.

33. During the tax years at issue, and at all times relevant hereto, the estimated value of the Family's real estate and tangible personal property assets *outside* Illinois was approximately **9 (NINE) times greater** than the value of the Family's real estate and tangible personal property assets *within* Illinois.

ANSWER: The Department states that the statements contained in paragraph 33 are conclusory and are not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department lacks sufficient information to either admit or deny the factual allegations in paragraph 33 and demand strict proof thereof.

34. During all tax years relevant hereto, the Family's annual *cost of travel outside* Illinois was **3 (THREE) times greater than** their Illinois income *tax liability*, whether as residents or non-residents of Illinois.

ANSWER: The Department states that the statements contained in paragraph 34 are conclusory and are not material allegations of fact. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 34 and demands strict proof thereof.

The Family's Businesses

35. Since at least 1980, starting with a net worth of zero, and at all times relevant hereto, Michael and Jennifer have been entrepreneurs who founded, owned, co-owned and sold a series of businesses based in Illinois, Indiana, and Florida, providing employment to support thousands of households, in Illinois and across the country.

ANSWER: The Department states that the statements contained in paragraph 35 are conclusory and are not material allegations of fact. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 35 and demands strict proof thereof.

36. At all times relevant hereto, and during the tax years at issue, on information and belief, these businesses have required Michael to travel throughout the country, regularly keeping him outside of Illinois in excess of 180 days a year.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 36 and demands strict proof thereof.

37. Michael founded the business principally relevant to the tax years at issue in 2003, when Michael was 48 years of age, with six employees in Illinois.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in paragraph 37 and demands strict proof thereof.

38. That principal business, still based in Illinois, now has over 700 employees in Chicago, has leased 100,000 square feet of space in the Chicago Loop district, and has generated Illinois income tax withholding revenue of approximately \$1.8 million per year. The business now has a nationwide Fortune 500 customer base in retail and industrial, providing services at more than 200,000 locations.

ANSWER: The Department objects to the term “principal business” as vague and ambiguous. With respect to the remaining statements in paragraph 38, the Department states that they 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 lacks sufficient information to either admit or deny the factual allegations in paragraph 38 and demands strict proof thereof.

39. The steady and strong growth of the principal business earned accolades in the press, attracted more opportunities for growth, and investors whom over time, positioned the business to accelerate its already impressive growth trajectory. On information and belief, the time Michael traveled outside of Illinois increased as well, to approximately 220 days per year in recent years.

ANSWER: The Department objects to the term “principal business” as vague and ambiguous. The Department lacks sufficient information to admit or deny whether Michael traveled outside of Illinois approximately 220 days per year in recent years and demands strict proof thereof. With respect to the remaining statements in paragraph 39, the Department states that they are conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required.

40. Since 2010, it has been Michael's and Jennifer's intent and plan to diminish their ownership in, and as necessary their rights to control of, the principle business.

ANSWER: The Department objects to the term "intent and plan" as vague, ambiguous and 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 lacks sufficient information to admit or deny them and demands strict proof thereof.

41. Since 2010, the Family have executed their plan to diminish their ownership and control through transactions in 2011, 2013, 2016, and others that have yet to occur.

ANSWER: The Department states that the statements contained in paragraph 41 are conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. For the purposes of this Answer, the Department states that years 2011, 2013, and 2016 are not part of this protest and therefore are irrelevant. Further, to the extent an answer is required, the Department denies any and all factual allegations contained in paragraph 41.

42. As part of that plan, in October of 2016 Michael caused the business to retain the services of a professional executive search firm to find a candidate suitable to replace him as Chief Executive Officer ("CEO") of the business.

ANSWER: The Department states that the statements contained in paragraph 42 are conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. For the purposes of this Answer, the Department states that years 2011, 2013, and 2016 are not part of this protest and therefore are irrelevant. Further, to the extent an answer is required, the Department denies any and all factual allegations contained in paragraph 42.

43. In 2017 Michael was able to surrender his post and duties as CEO to a newly installed CEO, and to transition himself to a stewardship and advisory role.

ANSWER: The Department states that the statements contained in paragraph 43 are conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no

answer is required. For the purposes of this Answer, the Department states that year 2017 is not part of this protest and therefore is irrelevant. To the extent an answer is required, the Department lacks sufficient information to either admit or deny the factual allegations in paragraph 43 and demands strict proof thereof.

44. As planned in 2010, the Family have reduced their interest in the principal business from a level of 60% in 2010 to a current level of approximately 10%, and Michael's involvement in the principal business has correspondingly decreased as well.

ANSWER: The Department states that the statements contained in paragraph 44 are conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 44 and demands strict proof thereof.

45. Since approximately 2004 and at all times relevant hereto, among other businesses, Michael and Jennifer also 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 45 and demands strict proof thereof.

46. Currently, Michael and Jennifer, indirectly, have founded a newly formed operating business, with offices in Tampa, Florida.

ANSWER: The Department lacks sufficient information to either admit or deny the factual allegations in paragraph 46 and demands strict proof thereof.

The Audits of the Family by the Department

47. 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: Department admits that Jennifer did not file a 2013 Illinois individual income tax return. For purposes of this Answer, the Department states that tax year 2013 is

irrelevant. The Department lacks sufficient information to either admit or deny any remaining factual allegations in paragraph 47 and demands strict proof thereof.

48. 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: Department admits that Michael filed a 2013 Illinois individual income tax return with the filing status married filing separately and states that the return speaks for itself. The Department admits that Michael paid the tax as self-assessed as reported on his 2013 Illinois individual income tax return. The Department lacks sufficient information to either admit or deny any remaining factual allegations in paragraph 48 and demands strict proof thereof.

49. 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: Department admits that Michael and Jennifer filed a 2014 Illinois individual income tax return with the filing status of married filing jointly and self-reported that they were nonresidents of Illinois for tax year 2014 and the return speaks for itself. Department denies that Michael and Jennifer were nonresidents of Illinois for tax year 2014. Department admits that Michael and Jennifer paid the self-assessed/reported income tax as shown on their 2014 Illinois individual income tax return.

50. For the 2015 tax year, as nonresidents on Illinois, Michael and Jennifer filed a nonresident joint Illinois income tax return and paid \$43,725 in tax due to Illinois, at the [sic] then applicable 3.75% tax rate for individuals.

ANSWER: Department admits that Michael and Jennifer filed a 2015 Illinois individual income tax return with the filing status of married filing jointly and self-assessed/reported that they were nonresidents of Illinois and the return speaks for itself. Department admits that Michael and Jennifer paid the self-assessed/reported income tax for tax year 2015.

The Department admits that the applicable income tax rate for individuals in 2015 was 3.75%.

51. 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 issued and mailed a Notice of Audit Initiation to Michael and Jennifer on February 27, 2017 for 2014 and 2015 tax years. The Department lacks sufficient information as to the actual date Petitioners received the February 27, 2017, Notice of Audit Initiation.

52. After complying with all Department document and information requests, [o]n 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 a review by the Informal Conference Board, an intermediate discretionary review available before the conclusion of an audit and before the issuance of formal assessments.

Exhibit 2

ANSWER: 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 52.

53. 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.

54. 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.

55. 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: 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 55.

56. 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.

57. 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.

58. 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: The Department states that the statements contained in paragraph 58 are conclusory and are not material allegations of fact. Department lacks sufficient information to either admit or deny the factual allegations in paragraph 58 and demands strict proof thereof.

59. 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 notices speaks for itself.

60. 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 for 2014 and 2015t and states that said letter speaks for itself. Department admits that Michael and Jennifer tendered the payment of tax and interest for 2014 and 2015.

61. On December 5, 2017, the auditor sent Michael and Jennifer a Notice of Audit Initiation for 2013 and another Notice of Audit Initiation for 2016. *Exhibit 3*.

ANSWER: Department states that Petitioners failed to attach its Exhibit 3. For the purposes of this Answer, the Department states that tax years 2013 and 2016 are not part of this protest and are irrelevant.

62. On information and belief, there was no coincidence at work in the auditor's un-sequenced selection of tax years to audit Michael and Jennifer (see paragraph 40).

ANSWER: Paragraph 62 does not contain a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required.

63. 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: Department admits that the Notices of Deficiency for 2014 and 2015 were issued and speak for themselves.

64. On or about March 14, 2018, Michael and Jennifer filed IL-1040-X Forms claiming a refund of the tax and interest paid for 2014 and 2015, asserting Michael's position as a nonresident of Illinois, as in Michael and Jennifer's original joint return filings prior to adjustment by the Department's audit.

ANSWER: Department admits that it received IL-1040-X Forms for 2014 and 2015 and the amended returns speak for themselves.

65. The instant action was timely filed shortly thereafter.

ANSWER: Department admits that this protest was filed on March 16, 2018.

COUNT I

2014 Tax Year

66. Petitioners by this reference incorporate and re-allege paragraphs 1 through 65 hereof as though fully set forth in this Count I.

ANSWER: Department restates and incorporates its Answers to paragraphs 1 through 65 as if fully set forth herein.

67. 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.

68. "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.

69. 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 69 are conclusory, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required.

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

ANSWER: The Department states that the statements contained in paragraph 70 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.

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

ANSWER: The Department states that the statement contained in paragraph 71 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 71.

72. 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 72 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 72.

73. 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 73 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.

74. 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 74 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 74.

75. 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 75 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 75. Additionally, the Department states that tax years 2013 and 2016 are not part of this protest and therefore are irrelevant to this matter.

76. 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. Department also states that tax years 2013 and 2016 are not part of this protest and therefore are irrelevant to this matter.

77. 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 77 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 irrelevant. 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.

78. 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 78 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 irrelevant. 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.

79. There being no presumption under the regulation that is operative for the 2014 tax year, the burden of proof rests upon [sic] the Department to come forward with evidence to establish, and to persuade the Tax Tribunal, that Michael and Jennifer were, contrary to their Illinois nonresident joint returns signed under penalties of perjury, instead resident of Illinois for IITA purposes.

ANSWER: Paragraph 79 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 admits the existence, force and effect of the Illinois Administrative Rules and Illinois Income Tax Act, which speak for themselves.

80. It was arbitrary and capricious, and an abuse of discretion and authority, for the Department to impose a negligence penalty for the 2014 tax year, when no presumption of residency was triggered under the regulation and the issue of Michael's and Jennifer's intent was inherently, and highly, fact sensitive.

ANSWER: Paragraph 80 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 any remaining allegations, and admits the existence, force and effect of the Illinois Administrative Rules, which speak for themselves.

COUNT II

2015 Tax Year

81. Petitioners by this reference incorporate and re-allege paragraphs 1 through 80 hereof as though fully set forth in this Count II.

ANSWER: Department restates and incorporates its Answers to paragraphs 1 through 80 as if fully set forth herein.

82. 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 82 contains legal conclusions, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. For purposes of this Answer, Department states that tax years 2012 and 2013 are not a part of this protest and, therefore, are irrelevant. To the extent an answer is required, the Department denies that Jennifer was a non resident of Illinois for 2014. The Department admits the existence, force and effect of the Illinois Administrative Rules, which speak for themselves.

83. 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 83 contains legal conclusions, not material allegations of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. For purposes of this Answer, Department states that tax years 2012 and 2013 are not a part of this protest and, therefore, are irrelevant. To the extent an answer is required, the Department denies that Michael was a non resident of Illinois for 2014. The Department admits the existence, force and effect of the Illinois Administrative Rules, which speak for themselves.

84. There being no presumption under the regulation that is operative for the 2015 tax year, the burden rests upon [sic] the Department to come forward with evidence to establish, and to persuade the Tax Tribunal, that Michael and Jennifer were, contrary to their Illinois nonresident joint returns signed under penalties of perjury, instead residents of Illinois for IITA purposes.

ANSWER: Paragraph 84 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 any factual allegations and admits the existence, force and effect of the Illinois Administrative Rules, which speak for themselves.

85. Michael and Jennifer responded fully, with substantial documentation, to the Department's extensive and intrusive information and documentation requests for the 2014 and 2015 tax years, providing ample factual support for their Illinois nonresident status and position in each year.

ANSWER: The Department denies the factual allegations contained in paragraph 85.

86. It was arbitrary and capricious, and an abuse of discretion and authority, for the Department to impose a negligence penalty for the 2015 tax year, when no presumption of residency was triggered under the regulation and the issue of Michael's and Jennifer's intent was inherently, and highly, fact sensitive.

ANSWER: The Department denies the factual allegations contained in paragraph 86.

COUNT III

In the Alternative

Reasonable Cause for Abate of Penalties

87. Petitioners by this reference incorporate and re-allege paragraphs 1 through 86 hereof as though fully set forth in this Count III.

ANSWER: Department restates and incorporates its Answers to paragraphs 1 through 86 as if fully set forth herein.

88. 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 88 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.

89. 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 89 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.

90. 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 90 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.

91. “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 91 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.

92. 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 92 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.

93. 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 93 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.

94. It was an arbitrary and capricious abuse of discretion for the auditor to reject the abatement of penalties requested by Michael and Jennifer.

ANSWER: Paragraph 94 contains a legal conclusion, 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 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 Deficiency 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.

State of Illinois

By:

/s/ Rebecca Kulekowskis
Deputy General Counsel

Date: March 8, 2019

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STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

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 Answers to Taxpayer’s 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 40, 43 through 48, 51, and 58) pursuant to 735 ILCS 5/2-610(b), which he verily believes to be true.

Signature Forthcoming
Greg Nelson
Revenue Auditor III
Illinois Department of Revenue