

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

Tyler R. and Talbot Debutts	)	
Cain,	)	
	)	
Petitioners,	)	No. 15-TT-63
	)	
v.	)	
	)	
The Illinois Department of	)	Chief Judge James Conway
Revenue,	)	
	)	
Respondent.	)	
	)	

**PETITIONERS', TYLER R. AND TALBOT DEBUTTS CAIN, MOTION TO QUASH DISCOVERY**

Petitioners, Tyler R. and Talbot Debutts Cain (the “Cains”) move pursuant to Illinois Supreme Court Rule 201 to quash Respondent’s discovery requests under both the doctrine of judicial estoppel and the doctrine of collateral estoppel. Discovery should be quashed because there are no materially disputed facts besides those that are estopped, and therefore any discovered facts would be irrelevant. The Court is empowered to quash discovery under Illinois case law and the Illinois Supreme Court Rules.

**FACTUAL BACKGROUND**

At issue in this case is a Notice of Deficiency entered for the 2007 tax year. Petitioners contend that many of the facts previously established in *Cain v. Hamer*, 2012 IL App. (1st) 111283 estop the Department from taking its position in the current controversy. *Cain v. Hamer* concerned years 1996 through 2004. In its Answer in the present case, the Department stated that many of Petitioner’s alleged facts are not material because they refer to facts established for years prior to 2007. *See, e.g.*, Answer, ¶ 1 (in attached Index of Exhibits). Yet the Department’s Requests to Produce (numbers 5 – 12) ask for documentation concerning years 2004, 2005, 2006, and 2007, even

though the current dispute pertains only to 2007.<sup>1</sup> Similarly, the Department's interrogatories (numbers 10 – 13) inquire about activities that occurred during years 2004 through 2007.<sup>2</sup> Thus the Department's claim that the facts previously established in *Cain v. Hamer* pertaining to 2004 are irrelevant is belied by their eagerness to discover facts about that year and other years occurring prior to 2007.

Furthermore, the Department of Revenue admitted in its Answer the following allegations: "At some point during 2007, Mr. Cain sold stock in Abbott Laboratories which Mr. Cain had contributed as capital to TRC Trading, Inc. upon its foundation, the title of which remained registered to Tyler R. Cain, resulting in capital gain income to TRC Trading, Inc." (Answer, ¶ 26) "In 2007, TRC Trading, Inc. distributed to Tyler R. Cain the proceeds from the 2007 sale of stock." (Answer, ¶ 27) Here, the Department's NOD asserts that the proceeds from this sale of stock, which the Department admitted was merely contributed as capital and held passively until its sale in 2007, should have been business income. This argument is incompatible with its admissions in the Answer in the case at bar, as well with facts stipulated to and asserted in court by the Department in *Cain v. Hamer*, as will be detailed below.

For approximately 6 years, Petitioners and Respondent were embroiled in litigation over the residency of the Cains under the Illinois Income Tax Act ("IITA"). On July 16, 2012 the Illinois Appellate Court held that Petitioners were not residents of Illinois under the IITA. *See Cain v. Hamer*, 2012 IL App (1st) 111283. Because *Cain v. Hamer* was such a fact-sensitive case, the parties engaged in extensive discovery, including sworn depositions, and both the Cains and the Department agreed to a voluminous Stipulation of Factual Matters. During the course of

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<sup>1</sup> See *Department's First Requests for Production of Documents* in the attached Index of Exhibits.

<sup>2</sup> See *Department's First Set of Interrogatories* in the attached Index of Exhibits.

*Cain v. Hamer*, the Department learned about the Cains' various businesses. Depositional testimony taken during 2008 and 2009 (i.e., after the 2007 tax year at issue), oral arguments in Circuit Court, and the agreed Stipulation of Factual Matters all established that the Cains and their various partnerships and S corporations had not been engaged in an active trade or business from 1996 going forward. *See, e.g.*, attached Index of Exhibits.<sup>3</sup> Both parties agreed that these entities held bonds, stocks, and other investments, and that the income earned by these entities was passive investment income.

Less than a year after the resolution of *Cain v. Hamer*, the Department issued a Notice of Audit Initiation for TRC Trading, Inc., which is an S corporation owned by Petitioners that functions like a "pass-through entity" for tax purposes. A mere *six days* after this Notice of Audit Initiation was sent, the Department issued a Notice of Proposed Deficiency assessing \$64,304 in tax and \$19,291 in penalty. The Notice challenged the Cains' classification of passive income earned by TRC Trading, Inc. as nonbusiness income—the Department claimed the income was business income. Petitioners' counsel warned the Department that such a position was contrary to judicially-established facts and that attempting re-audit or re-litigate such facts would not only be estopped, but potentially subject the Department to paying attorneys' fees under the Taxpayers' Bill of Rights. The Department nevertheless soldiered on, and on February 5, 2015, issued a Notice of Deficiency ("NOD") totaling \$118,761.00.

Petitioners brought the current matter to contest this NOD. On September 22, 2015, Respondent served two discovery requests: "Department's First Requests for Production," and "Department's First Set of Interrogatories." Petitioners request that the Court quash these

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<sup>3</sup> *See also Stipulation of Factual Matters*, pp. 2, 4, 8–9, 12 (documenting various facts about the Cains for years occurring *after* 2004).

discovery requests.

## ARGUMENT

**I. Application of judicial estoppel is necessary because in *Cain v. Hamer* the Department asserted that the Cains earned passive income but it now asserts the opposite in the current matter.**

The doctrine of judicial estoppel “provides that a party who assumes a particular position in a legal proceeding is estopped from assuming a contrary position in a subsequent legal proceeding.” *People v. Caballero*, 206 Ill.2d 65, 81 (2002) (internal citations omitted). The rationale for judicial estoppel is to “prevent litigants from playing fast and loose with the courts.” *Moy v. Ng*, 371 Ill. App. 3d 957, 963 (1st Dist. 2007) (internal citations omitted). Judicial estoppel prevents “chameleonic litigants from ‘shifting positions to suit the exigencies of the moment.’” *Ceres Terminals, Inc. v. Chicago City Bank & Trust Co.*, 259 Ill. App. 3d 836, 850 (1st Dist. 1994) (internal citations omitted). Judicial estoppel is invoked to protect the integrity of the courts, and to promote truth-seeking rather than gamesmanship. *Smeilis v. Lipkis*, 2012 IL App (1st) 103385, ¶ 19.

In general, there are five elements required for the doctrine of judicial estoppel to apply: the party to be estopped must have (1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding and received some benefit from it. *Caballero*, 206 Ill.2d at 81. These requirements are not set in stone, however; instead, the doctrine of judicial estoppel is “flexible and not reducible to a pat formula. . . . This is especially true when strict application of a requirement would frustrate the public policy underlying the application of the doctrine.” *Smeilis*, 2012 IL App (1st) 103385, ¶ 46. For instance, in *Moy*, the application of judicial estoppel was upheld despite the fact that the

estopped party did not prevail in the first proceeding. *See Moy*, 371 Ill. App. 3d at 963.

In *Cain v. Hamer* the parties agreed to stipulate to the following facts (quoted below *verbatim*):

- During the Relevant Period, Mr. Cain did not perform any personal services for TRC Trading, Inc.
- TRC Trading, Inc. had no paying clients at any time during the Relevant Period.
- During the Relevant Period, TRC Trading, Inc. never offered or provided services to the public.
- Mr. Jacobson [Cain's accountant] recommended that Mr. Cain's pension plan be terminated in 2004 when he began preparing TRC Trading, Inc.'s tax returns, *since there was no business activity taking place* and there was no reason to have such liability.
- During the Relevant Period, Mr. Cain made only a few trades (approximately ten or less) each year through TRC Trading, Inc.<sup>4</sup>

To foreclose any speculation about whether the Department really agreed or knew what it was agreeing to in the Stipulation of Factual Matters, see the attached Index of Exhibits for an email and "redline document" from the Department's lead attorney in *Cain v. Hamer* detailing his carefully considered input and voluminous additions to the Stipulation of Factual Matters.

Here, the Department has taken two positions that are factually inconsistent ("the income is passive" in *Cain v. Hamer* and "the income is from active business activities" in the current matter). The Department's first position was asserted in a judicial proceeding in both Cook County Circuit Court and Illinois Appellate Court (1st District), while the Department's second position is now taken before this Tax Tribunal. The Department clearly intends for the trier of fact to accept the truth of the facts alleged, since its whole case relies on these facts (despite admitting that the stock sold was contributed and remained in the name of Tyler Cain).. Thus four out five of the elements from the test for judicial estoppel outlined in *Caballero*, 206 Ill.2d at 81 are easily satisfied.

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<sup>4</sup> See Stipulation of Factual Matters, *Cain v. Hamer*, Cook County Circuit Court, Case no. 06 L 050986 (in attached Index of Exhibits).

The fifth element of the *Caballero* test for judicial estoppel is that the party to be estopped should have succeeded in the first proceeding and received some benefit from it. *Id.* Illinois courts have not construed the elements of the test rigidly, instead opting for a flexible approach that effectuates the public policy concern underlying judicial estoppel, namely, to prevent litigants from playing fast and loose with the courts. In *Moy*, the Illinois Appellate Court (1st District) upheld the application of judicial estoppel despite the fact that the estopped party had not won the first proceeding because doing so served the purpose of judicial estoppel. *Moy*, 371 Ill. App. 3d at 963. Similarly, in the case at bar, judicial estoppel should be applied to prevent a chameleonic shifting of positions by the Department and to uphold the integrity of the judicial process.

It is clear from the agreed Stipulation of Factual Matters in *Cain v. Hamer* that the income from the stock sold here was neither generated by business activities of TRC Trading, Inc. nor sold in furtherance of any business of TRC Trading, Inc. The Department's own admission in the Answer, ¶¶ 26–27, admits as much. Thus, there is no justification for the extensive discovery about TRC Trading, Inc.'s business activities (or lack thereof). Litigants are not allowed to assert contradictory factual positions in court proceedings. That is precisely what the Department seeks to do in this case, and therefore judicial estoppel should apply to prevent it.

**II. The Department stipulated that the Cains earned passive income in *Cain v. Hamer*, so the Department is collaterally estopped from re-adjudicating this factual issue.**

When an issue has been prosecuted to final judgment, the doctrine of collateral estoppel prevents that issue from being re-litigated between the same parties. According to the Illinois Supreme Court:

[A] matter once litigated between parties to a final judgment in a court of competent jurisdiction cannot again be controverted. When this doctrine is applied to a single question or point arising in the course of litigation which has

finally been adjudicated, it is designated as an estoppel by verdict, and the same question or point cannot again be litigated between the same parties in the same or any other court . . . and neither party, nor their privies, will be permitted to allege anything inconsistent with the finding upon that question.” *Chicago Title & Trust Co. v. Nat’l Storage Co.*, 103 N.E. 227, 231 (Ill. 1913).

Collateral estoppel is premised on the idea that “one opportunity to litigate an issue fully and fairly is enough.” *Raper v. Hazelett & Erdal*, 449 N. E. 2d 268, 270 (Ill. App. 1983).

The elements of collateral estoppel under Illinois law are as follows: (1) the issue decided in the prior adjudication must have been identical to one presented in the new case; (2) the party against whom the estoppel is asserted was a party or in privity with a party to the prior litigation; and (3) a final judgment on the merits was issued in the former suit. *Id.* Collateral estoppel is “equally available to a plaintiff in support of his action, when the circumstances warrant it, as when offered by a defendant as a matter of defense.” *Celotex Co. v. Koblitz*, 241 Ill. App. 159, 163 (1926). Therefore, collateral estoppel can be used by plaintiffs and defendants alike to preclude certain issues that arise in litigation. Furthermore, the Department and other governmental agencies are subject to collateral estoppel the same as private litigants. *See Consol. Distilled Products, Inc. v. Allphin*, 73 Ill.2d 19, 29 (1978).

In *Cain v. Hamer* the Court held that the Cains were not residents of Illinois under the HTA. Furthermore, during the *Cain v. Hamer* litigation, the parties stipulated to the following facts (quoted below *verbatim*):

- During the Relevant Period, Mr. Cain did not perform any personal services for TRC Trading, Inc.
- TRC Trading, Inc. had no paying clients at any time during the Relevant Period.
- During the Relevant Period, TRC Trading, Inc. never offered or provided services to the public.
- Mr. Jacobson [Cain’s accountant] recommended that Mr. Cain’s pension plan be terminated in 2004 when he began preparing TRC Trading, Inc.’s tax returns, ***since there was no business activity taking place*** and there was no reason to have such liability.

- During the Relevant Period, Mr. Cain made only a few trades (approximately ten or less) each year through TRC Trading, Inc.<sup>5</sup>

The Appellate Court relied on the stipulated facts and accepted them as true. *See Cain v. Hamer*, 2012 IL Ap. (1st) 112833, ¶ 3 (“As the stipulation recites, . . .”). The Appellate Court further noted that “[a]lthough the [Cains] owned companies during the relevant period, they had limited involvement in those companies.” *Id.* at ¶ 9.

During the prior litigation, the Department engaged in an extensive investigation of the Cains and their businesses, and reviewed a voluminous amount of relevant documentation prior to agreeing to the Stipulation of Factual Matters. Included in that documentation was an extensive list of tax returns, including the federal tax returns for TRC Trading, Inc. for the years 1996 through 2004.<sup>6</sup> The Department already had ample opportunity (and motive) to discover information concerning the activities of TRC Trading, Inc.

The deposition of Robert M. Jacobson, the Cains’ accountant, further cements that it was established that TRC Trading, Inc. was a passive business. During this deposition taken by the Department, the following dialogue occurred:

DEPARTMENT: Now, you also said that he [Tyler Cain] was paid a salary by TRC Trading?

JACOBSON: Correct.

DEPARTMENT: Do you know whether or not the salary continued to be paid?

JACOBSON: No. The salary stopped.

DEPARTMENT: And why was that, do you know?

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<sup>5</sup> See Stipulation of Factual Matters, *Cain v. Hamer*, Cook County Circuit Court, Case no. 06 L 050986 (attached in the Index of Exhibits).

<sup>6</sup> See *Transcript of Deposition of Tyler R. Cain, Dec. 22, 2008 at 10:00 a.m.*, pp. 15–16 and Exhibit A, *Cain v. Hamer*, Case No. 06 L 050986 (attached in the Index of Exhibits).

JACOBSON: Well, it appeared that he kept paying the salary because that's what he always did and he thought he had to. He was incurring payroll taxes on it. But he thought he always had to pay himself a salary. When I told him back in '02, this was before I started working on his personal return, and I believe my conversation was with the other accountant, I said, Why are you continuing to issue payroll? All he is doing is lending his company money to turnaround and pay him. And they realized that they should be putting a stop to it. There was no purpose to be issuing payroll.

DEPARTMENT: You're familiar with the defined benefit plan deduction the S corp was taking?

JACOBSON: Yes.

DEPARTMENT: Do you know if that continued?

JACOBSON: It continued through '03 or '04. I believe it was '04.

DEPARTMENT: Do you know the reasons why it stopped?

JACOBSON: Yes. I consulted with him, and I don't whether the prior accountant just left or whether I was working with him on it. There was no reason to keep that liability going. There was no business going on anymore, that it should be closed, and they closed it.

DEPARTMENT: When you reviewed the returns of TRC Trading, Inc., did you get a sense of the trading activity that the entity conducted?

JACOBSON: Yes. It was minimal amounts of trading. For example, there may only be from '99, when I looked through the returns, from '99 through 2004, I think the highest number of sales of stock was ten for the whole year. Before that I didn't have a copy of the Schedule D to tell you, but there was not active trading going on.

DEPARTMENT: And to your knowledge TRC Trading has never traded for anybody other than Mr. Cain's accounts?

JACOBSON: That's correct.

DEPARTMENT: The type of income TRC Trading, you stated, was interest dividends and capital gains?

JACOBSON: TRC Trading, Inc.?

DEPARTMENT: Yes.

JACOBSON: Correct.<sup>7</sup>

The deposition of Jacobson, taken one year after the tax year at issue here at a time when he was still the accountant for Tyler Cain, established that: (1) no business activities besides de minimis personal trading occurred in TRC Trading, Inc.; (2) TRC Trading, Inc. never had customers, it was used solely to execute Cain's personal trades; and (3) TRC Trading, Inc. had only passive types of income (interest, dividends, and capital gains).

Two important issues that were already determined in the Cains' previous litigation with the Department are present here again: (1) were the Cains residents of Illinois? (no, according to the Court); and (2) Did the Cain's earn income from labor or other active business activities? (no, as stipulated by the parties, acknowledged by the Appellate Court, and as demonstrated by the Department's own investigation into the matter and its own deposition of the Cains' accountant). The case at bar deals with the same parties (the Cains and the Illinois Department of Revenue), and the Circuit and Appellate Courts issued final judgments on the merits in the previous case. Therefore, all of the elements of the doctrine of collateral estoppel are satisfied. *See Celotex Co.*, 241 Ill. App. at 163. Further, the Department has already admitted here that, consistently with the previously established facts, the 2007 income at issue was not associated with any third-party customer (there were none), but rather was a sale of capital stock contributed by Mr. Cain which was always registered in his name and never registered in the name of TRC Trading, Inc. The Department should accordingly be collaterally estopped from raising these issues again.

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<sup>7</sup> *Deposition of Robert M. Jacobson, February 17, 2009*, pp. 19–21, *Cain v. Hamer*, Case No. 06 L 050986 (attached in the Index of Exhibits).

### III. The Court has broad discretion to quash discovery

“In the area of pretrial discovery, the court's discretionary powers are extremely broad.” *Wynne v. Loyola Univ. of Chicago*, 318 Ill. App. 3d 443, 455 (1st Dist. 2000). The scope of discovery is limited to relevant subject matter. Ill. Sup. Ct. R. 201(b)(1). The touchstone for determining the reasonableness of a discovery request is the relevance of the material sought to the claims and defenses in the underlying litigation. *See People v. Teller*, 207 Ill. App. 3d 346, 351 (2d Dist. 1991) (“It is well settled that a court should deny a discovery request not only when the material requested is irrelevant or immaterial but also when the request is oppressive.”). Furthermore, “a court should deny a discovery request where there is insufficient evidence that the requested discovery is relevant or will lead to such evidence.” *Kraima v. Ausman*, 365 Ill. App. 3d 530, 533 (1st Dist. 2006), *reh'g denied, appeal denied* 221 Ill. 2d 640 (2006) (internal citations omitted).

The only relevant items sought in discovery relate to the estopped issues. Any other discovery would be irrelevant and therefore the Department's discovery requests should be quashed. For example, the Department's *First Request for Production of Documents* seeks production of TRC Trading, Inc.'s federal and Florida income tax returns for years 2004 through 2007, despite the fact that: (1) Petitioner already produced one of these returns as part of the *Cain v. Hamer* litigation, which concluded less than one year prior to the initiation of the audit that is contested here; (2) Petitioner already produced the federal returns as part of the audit that led up to the current matter; and (3) the Department knows from its discovery requests, the documents produced and its own stipulation in the *Cain v. Hamer* litigation that there were no TRC Trading, Inc. Florida income tax returns as TRC Trading, Inc. conducted no business in any State during that time, and prior to Mr. Cain's retirement years before, it conducted business only

in Illinois as a vehicle to hold his trading seat on the exchange. Disregarding for the sake of argument that collateral estoppel should bar such requests, the requests are excessive, burdensome, and most unlikely to lead to the discovery of relevant information.

Moreover, trial courts have broad discretion to quash pre-trial discovery, especially where there are no material points of fact or law in dispute. *See Shapo v. Tires 'N Tracks, Inc.*, 336 Ill. App. 3d 387, 394 (1st Dist. 2002) (“A discovery request may properly be quashed where the trial court has before it sufficient information upon which to decide defendant's motion to dismiss.”); *see also DOD Technologies v. Mesirov Ins. Services, Inc.*, 381 Ill. App. 3d 1042, 1055–56 (1st Dist. 2008) (same). The Court can limit discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression, or supervise discovery to ensure the same. Ill. Sup. Ct. R. 201(c)(1) & (2). Here, the Court has sufficient information upon which to dismiss the case, because the Department is both judicially estopped and collaterally estopped from taking the positions it must take in this case to succeed on the merits. It is, moreover, necessary to quash discovery in this case to prevent the unreasonable annoyance and expense of re-litigating issues which were recently decided at the Circuit Court and Appellate Court levels. Accordingly, it is within the Court’s power to quash discovery pursuant to applicable case law and Rule 201.

**IV. In the alternative, petitioners request that discovery be limited**

Alternatively, should the Court decide to allow discovery, such discovery should be limited. Specifically Petitioners request that any discovery allowed be limited to the subject of what changed, if anything, between the time period beginning on January 1, 2005 (the first day not covered by *Cain v. Hamer*) and the 2007 date of the sale of the Abbott stock. The passive nature of TRC Trading, Inc.’s holdings was already established as of December 31, 2004. The

only potentially relevant issue is if TRC Trading, Inc.'s activities changed in the subsequent period leading to the sale of the Abbott stock such that TRC Trading, Inc. could have business income attributable to Illinois.

That said, Petitioners reaffirm their belief that discovery should be quashed in its entirety for the previously discussed reasons.

### CONCLUSION

Passive income of the sort earned by the Cains, when the underlying income-producing assets were not used in the regular course of a trade or business, is nonbusiness income. The Department agreed, in statements made to the Circuit Court and the agreed Stipulation of Factual Matters in *Cain v. Hamer*, that the income earned by the Cains' entities was passive and that there were no business operations. Yet, in the NOD at issue in this case, the Department claims that Petitioners' income is business income, a conclusion that, given the Cains' undeniable status as nonresidents, could only be reached if the Cains were using their income-producing assets in an active trade or business.

The Department is flip-flopping on factual positions in order to gain an advantage in the current litigation, thereby subjecting itself to judicial estoppel. During *Cain v. Hamer* the Department stipulated that the income earned by the Cains' entities was passive, *i.e.*, not stemming from an active trade or business, yet in the current matter, the Department insists that it is business income and that the assets were used in an active trade or business. This is just the sort of "cynical gamesmanship" that judicial estoppel was designed to prevent. *See Ceres Terminals, Inc. v. Chicago City Bank & Trust Co.*, 259 Ill. App. 3d 836, 850 (1st Dist. 1994) (internal citation omitted).

Furthermore, the Department is collaterally estopped from re-litigating the issue of

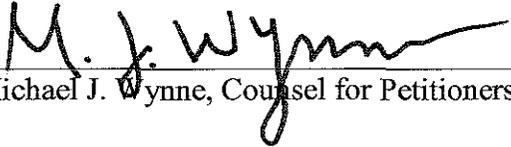
whether the Cains' income was earned passively or actively. In *Cain v. Hamer* it was established that the Cains' income was passive and not the result of running a business or performing services. Now, in a case involving the same litigants, the Department wants to re-litigate the character of the Cains' income. That factual issue is precluded by the doctrine of collateral estoppel.

There are no material factual disputes outside of the issues which Petitioners contend are estopped from re-adjudication. Therefore, discovery is unnecessary and should be quashed.

**WHEREFORE**, Petitioners move this Honorable Court to quash discovery in this case pursuant to the doctrines of judicial estoppel and collateral estoppel, as no material factual disputes exist outside of those that are so estopped, and any further discovered facts would be irrelevant and cause undue annoyance and expense for Petitioners.

November 11, 2015

Respectfully Submitted,

  
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# **EXHIBIT**

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

Tyler R. and Talbot Debutts	)	
Cain,	)	
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Petitioners,	)	No. 15-TT-63
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v.	)	
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The Illinois Department of	)	Chief Judge James Conway
Revenue,	)	
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# TAB 1

ILLINOIS INDEPENDENT TAX TRIBUNAL

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TYLER R. and TALBOT DEBUTTS	)	
CAIN,	)	
Petitioners,	)	
	)	
v.	)	No. 15-TT-63
	)	
THE ILLINOIS DEPARTMENT OF	)	
REVENUE,	)	
Respondent.	)	

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**DEPARTMENT'S FIRST REQUEST FOR PRODUCTION**

The Department of Revenue, State of Illinois ("Department"), pursuant to Illinois Supreme Court Rules 201 and 214, requests Petitioners, Tyler R. Cain and Talbot Debutts Cain, ("Taxpayer") respond to the following request for production of documents, objects, tangible things, and real estate in writing, under oath, within twenty-eight (28) days from the date of this request at the offices of the Department, 100 West Randolph Street, 7th Floor, Chicago, Illinois, 60601, for inspection and copying.

**DEFINITIONS**

The following terms used herein, whether or not a parenthetical reference to the definition number follows the term, shall have the meaning defined below.

1. "State the basis" for a claim or contention means to describe chronologically each and every fact, action or occurrence that relates to the particular claim or contention. In describing each such fact, action or occurrence: (a) do so in accordance with the definitions set forth herein; (b) identify each person, as defined herein, having knowledge of the fact, action or occurrence; (c) identify each document and communication, as those terms are defined herein, that refers or relates to the fact, action or occurrence; and (d) identify the source from which the information set forth in your response was obtained including the identity of all persons and documents which you consulted in preparing your response.
2. "Identify the person(s)" or "identify the individual(s)" means to state the full name of each person, his/her/its present or last known home and business addresses and telephone numbers, and if an individual, his/her current employer, job title and responsibilities.
3. "Identify each document" shall mean to provide, (a) the identity of each person who wrote, signed, initialed, dictated, authorized or otherwise participated in any way in the creation of the document, (b) the identity of each person who directed preparation of the documents, (c) the identity of each addressee or recipient of the document (e.g.,

memorandum or letter), (d) the date of the document, and (e) the present location of the original.

4. "Identify each communication" means to describe any oral or written exchange of words, thoughts or ideas to another person(s) whether person-to-person, in group, by telephone, telex or any other process, electronic, mechanical otherwise. In describing communications, (a) identify all persons present when the communication was spoken, heard, written or read, (b) identify the form of communication (written, oral, in person, electronic means), (c) state the date of the communication, and (d) identify all documents that refer or relate to the communication.
5. "Document" means all original written, recorded, graphic matters or databases (see Par. 35 *infra.*) whatsoever and all copies thereof, including, but not limited to, papers, books, records, letters, tangible things, correspondence, communications, telegrams, cables, messages (TWX, telex, cablegrams, mailgrams or other types), memoranda, notes, drafts, notations, workpapers, worksheets, transcripts, minutes, meeting schedules, attendance lists, reports, and recordings of telephone or other conversations, or of interviews, conferences, other meetings, affidavits, statements, summaries, opinions, reports, studies, surveys, forecasts, analysis, evaluations, contracts, a agreements, proposals, jottings, agendas, bulletins, notices, announcements, advertisements, instructions, charts, manuals brochures, publications, pamphlets, schedules, journals, statistical records, desk calendars, appointment books, expense reports, time cards, time records, diaries, work assignments, job descriptions, lists, tabulations, recordings (tape, disc, card, belt, fiche, wire, databases, computer program or any other types), computer printouts, data processing program library, data processing input and output, microfilm, books of accounts, records and invoices reflecting business operations, interoffice and/or interdepartmental communications, price lists, ledgers, photographs, photographic negatives, photographic slides and transparencies, pictures, drawings, sketches, graphs, maps, motion pictures, video recordings, models, local and long distance telephone records, all records kept by electronic (e.g., databases), photographic, magnetic or mechanical means, or any other device or instrument from which information can be perceived or which is used to memorialize human though speech or action. Identify and produce copies of the same document only if the original or copies contain some material, handwritten or otherwise, that is to on other copies or the original, or if they contain attachments, enclosures or documents referred to in any document produced pursuant to this Request. If any tape, disc, card, belt, fiche, wire or other electronic, mechanical recording, transcript of computer program is produced, also produce such documents as are necessary for the decoding, playing back, printing out, interpretation of, or any other documents which are necessary to convert such information into a readable, useful and/or useable format.
6. "Refer" or "relate" means, in addition to their customary and usual meaning discuss or discussing, reflect or reflecting assess or assessing, record or recording, mentioning, summarizing and/or touching upon.

7. "Person" means any natural person, a trust, estate, partnership, association, firm, company, joint venture, corporation, limited liability company, lessee, leaser, licensee, franchisee, fiduciary or other entity.
8. "And/or" shall be construed conjunctively and disjunctively so as to require the broadest response to the particular interrogatory.
9. "Describe" means to narrate, express, explain, set forth, relate, recount, depict, delineate, portray. *Black's Law Dictionary*, (6<sup>th</sup> Ed. 1990).
10. "Financial Operations" include but are not limited to such activities as budgeting, accounting, controlling, receipt and disbursement of funds, reporting [Balance Sheet, Income Statements (Profit & Loss Statements) Cash Plan, Ratio Analysis, Annual Reports, 10-Ks or reports filed with any other governmental regulatory commission]; revenues, employees salaries (maintenance of pay and leave records), processing, and payment of expenses, payment of dividends, stock prices, income, credit and collection management, payment of accounts payable, issuing financial statements in conformance with governmental regulations and performance management. Financial operations of a company also include decisions relating to the proper amount of working capital and retained earnings necessary to finance a company's operations, compliance with SEC requirements, compliance with financial covenants, and the company's ability to affect business transactions.
11. "Finance" means "to conduct the finances of" or to "engage in, or procure money for financial operations," and defined the noun "finance" as "management of monetary affairs, especially those involving large sums or investment funds."
12. "Financing" is defined as supplying funds, providing with capital or credit or loaning money as needed to carry on a business. This definition is in accordance with *Black's Law Dictionary* 630 (6th ed. 1990) ("As a verb, to supply with funds through the payment of cash or issuance of stocks, bonds, notes, or mortgages; to provide with capital or loan money as needed to carry on business."), and *Webster's Third New International Dictionary* 851 (2003) ("As a verb, 1. to raise or provide funds for. 2. to provide with necessary funds in order to achieve a desired end. 3. to sell on credit."). These definitions do not limit the term to the charging of interest for borrowing money.
13. "Financial record" includes but is not limited to any document that records a financial transaction such as tax returns, balance sheets, books, ledgers, statements of account, profit and loss statements, income statements, accounts payable, accounts receivable, other statements of income or expense, invoices, receipts orders for the payment of money, bills of exchange, checks, promissory notes and vouchers; documents of prime entry; working papers and other documents needed to explain: (i) the methods by which financial statements are made up; and (ii) adjustments to be made in preparing financial statements, tax returns, etc.

14. "Business operations" mean anything relating to a company's day-to-day activities and includes manufacturing operations, e.g., running plants/mills that operate around-the-clock, selling a distinct set of products or services, serving a specific group of customers, and competing with a well-defined group of competitors.
15. "Expense" is used in the same context as in Section 162(a) of the Internal Revenue Code, which allows a deduction for "ordinary and necessary expenses" incurred in carrying on a trade or business. To be deductible under Section 162(a), an expense must have a proximate and direct relationship to the taxpayer's trade or business. See, e.g., *Kornhauser v. United States*, 276 U.S. 145, 153 (1928); *Fred W. Amend Co. v. Commissioner*, 454 F.2d 399, 402 (7th Cir. 1971); *Coughlin v. Commissioner*, 203 F.2d 307, 308-309 (2d Cir. 1953).
16. "Exert influence" means bringing about a particular result; controlling power based upon a particular type of relationship (*Webster's Dictionary*, 1913, p. 760).
17. "Course of action" is a means or method by which a particular objective may be achieved.
18. "Agent" means one who by mutual consent, acts for the benefit of another; one authorized by a party to act in that party's behalf. *Gifis Law Dictionary* (1975), p. "Affiliate" means an entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with; is in a partnership or joint venture relationship with; or is a co-shareholder of a corporation, a co-member of a limited liability company, or co-partner in a limited liability partnership with the entity.
19. "Advertising services" includes, but is not limited to activities one engages in to communicate with customers and potential customers. Such activities include, but are not limited to, the agency(ies) used to create TV, radio or print ads, the agency(ies) used to purchase TV, radio, or print ad space or time, direct marketing campaigns (via both U.S. mail and emails) and social media (e.g., Facebook, Twitter, etc.). The term "print ad" includes newspapers, magazines, ad circulars, billboards, Internet, email, sponsorships, and placards and signage at sporting events, concerts or similar events. "Advertising services" also includes the exercise of review or approval of a subsidiary's advertising.
20. "Marketing services" includes, but is not limited to, the activities one engages in to make customers aware of its products and to convince consumers to shop and purchase at it over its competitors. These activities include communicating the value of a product or service to customers, market analysis, market research, merchandising, packaging, store displays, promotional materials, category management, shelf layouts, store layouts, website design, email and direct marketing campaigns, and promotional written and electronic materials.

21. "Cash management" services/systems includes, but are not limited to making loans, guaranteeing and co-signing loans, the issuance, repayment and repurchase of short-term and long-term debt, paying bills, writing checks, disbursement of funds, collecting receivables, preparing payroll, maintaining centralized banking accounts, investing, "sweeping" accounts, providing capital, funding acquisitions, transfers of cash into a central account, and the use of a concentration or central account to transfer funds between subsidiaries or other affiliated entities.
22. "Research and development services," includes, but is not limited to the use of research and development facilities and the providing of information regarding formulations, engineering, creating, and prototyping, product and packaging design, marketing techniques, creating and devising computer programs, architecture, quality control and trouble-shooting.
23. "Legal services" includes, but are not limited to the approval and review of contracts, intellectual property, advice or consultation regarding federal, state and local tax laws, personnel and human resource matters, real estate transactions, collections, participation in negotiations, and use of common outside legal counsel.
24. "Accounting services" includes, but is not limited to the preparation of federal, state and local tax returns, creation of annual, quarterly or monthly financial statements, performance of the internal audit function with respect to all affiliated entities, maintenance of books and records of subsidiary, and regular reporting of operating results to parent by affiliates, divisions, or subsidiaries.
25. "Employee benefits" includes, but is not limited to retirement plans, pension plans, welfare benefit plans, or other qualified plans, health insurance, life insurance, stock option plans or other non-qualified plans, worker's compensation, tuition reimbursement plan, and commuter benefits.
26. "Tax Years at Issue" means the period beginning January 1, 2004 through and including December 31, 2007. If no time period is specified in a particular production request, you are to assume that this period applies.
27. "Taxpayer" means Tyler R. Cain and Talbot Debutts Cain.
28. "TRC Trading" and "TRC Trading Inc." means TRC Trading Inc. FEIN: [REDACTED]

### INSTRUCTIONS

1. The request for documents pertains to the Taxpayer and its affiliates.
2. "And/or" shall be construed conjunctively and disjunctively so as to require the broadest response to the particular interrogatory.
3. **These requests call for production of each requested document in its entirety.** You shall produce the original copy of each document requested herein, as well as any

drafts, revisions, or copies of the same which bear any mark or notation not present on the original, or which otherwise differ from the original. **Any documents not tendered to the Department in response to the Request for Production shall be produced for copying at the Department of Revenue, 100 W. Randolph St., 7<sup>th</sup> Floor, Chicago, Illinois, 60601.**

4. If a document is responsive to these requests, but Taxpayer asserts it is privileged, Taxpayer is required to submit a privilege log that identifies the documents by the date, signatories, the title (or brief summary) of the documents, and the privilege claimed.
5. You shall segregate documents produced in response to this Request for Production of Documents according to the paragraph or subparagraph to which the documents are responsive. You shall also identify in writing paragraphs or sub paragraphs of this request for which no responsive documents are produced.
6. Where Taxpayer is asked to identify (or state the identity of) a document, the interrogatory calls for the document's title and date, a brief description of the type of document, and the identity of the person who is the present custodian of the document.
7. If you believe that any given document is responsive to more than one paragraph or subparagraph of this request, you shall produce the document only in response to the first such paragraph or subparagraph. You shall also identify in writing paragraphs or subparagraphs of this request for which you believe that responsive documents have been produced in response to any other paragraphs or subparagraphs of this request.
8. If you are asked to produce a document and such document has ceased to exist, specify for each document: (a) the type of document; (b) the information contained therein; (c) the date of the document; (d) the circumstances under which such document ceased to exist; and (e) identify each person having knowledge of the circumstances under which the document ceased to exist and each person having knowledge of the document's contents.
9. If you are asked to produce a document and you do not possess or control such document, specify for each such document: (a) the type of document; (b) the contents of the document; and (c) identify each person and/or entity having possession or control of the document, and each person having knowledge of document's contents.
10. A word used in the masculine also includes the feminine and words used in the singular form include the plural.
11. Unless otherwise specified, these requests call for the production of documents dated, prepared or received during, or otherwise related to, the entire period at issue – January 1, 2007 through and including December 31, 2007.

12. Taxpayer has a duty to seasonably supplement its responses to the Request for Production of Documents as soon as such documents come into Taxpayer's possession or become known to him. Ill. Sup. Ct. Rul. 214.
13. The Department hereby requests an affidavit attesting to the complete compliance with this First Request for Production of Documents pursuant to Illinois Supreme Court Rule 214 and 86 Ill. Admin. Code Sec. 200.125(a)(3).

#### ITEMS TO BE PRODUCED

1. Produce all documents reviewed by Petitioners, or an agent thereof, in preparation of the Petition in the above captioned matter.
2. Produce all documents reviewed by Petitioners, or an agent thereof, in preparation of Taxpayer's Answers to Department's First Set of Interrogatories issued in the above captioned matter.
3. Produce the Articles of Incorporation, Corporate Bylaws, and any other operating documents of TRC Trading Inc. (FEIN: [REDACTED]).
4. Produce copies of all statements and the front & back of all checks written out of any operating account identified in Interrogatory Number 7 of the Department's First Set of Interrogatories.
5. Produce Form 1120S (U.S. Income Tax Return for an S Corporation) for TRC Trading Inc. (FEIN: [REDACTED]), including all schedules and required attachments, for the tax years ending December 31, 2004, 2005, 2006 and 2007, respectively. Each return should be a signed and dated copy of the original.
6. Produce Form 1040 (U.S. Individual Income Tax Return), including all schedules and required attachments, for Taxpayer for the tax years ending December 31, 2004, 2005, 2006 and 2007, respectively. Each return should be a signed and dated copy of the original.
7. Produce Form F-1120 (Florida Corporate Income/Franchise Return) for TRC Trading Inc. (FEIN [REDACTED]) for tax years ending December 31, 2004, 2005, 2006, and 2007.
8. Produce Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan filed for TRC Trading Inc. (FEIN: [REDACTED]) for tax years ending December 31, 2004, 2005, 2006, and 2007.
9. Produce the invoice, payment, and any supporting documentation for each deduction claimed on TRC Trading's U.S. 1120S for tax years ending December 31, 2004, 2005, 2006 and 2007, specifically:

2004

Line 11, Rents	\$32,640
Line 12, Taxes & Licenses	\$1,867
Line 17, Pension, profit sharing, etc., plans	\$303,696
Line 18, Other deductions	\$38,520

(Accounting fees \$3,960; Insurance \$17,644; Lease \$1,100; Legal and Professional Fees \$1,445; Office expense \$8,827; Telephone \$3,544; Annual Custody Fee \$2,000)

2005

Schedule K, Line 12d, Other deductions	\$145,919
--	-----------

(Annual custody fee \$1,000; Accounting Fees \$4,040; Lease \$1,200; Legal and Professional \$462; Office Expense \$4,072, Postage \$1,486; Dues & Subscriptions \$129; Phone \$3,904; Rent \$32,580; IL Replacement Tax \$96,301; Miscellaneous \$225; Depreciation \$520)

Schedule K, Line 16c, Nondeductible Expenses	\$10,903
Schedule L, Line 18, Other current liabilities	\$303,696

2006

Schedule K, Line 12d, Other deductions	\$59,361
--	----------

(Rent \$39,816; Telephone \$4,468; Accounting \$13,267; Legal & Professional \$269; Office Lease \$1,200; Dues & Subscriptions \$130; Office Expenses \$211)

Schedule K, Line 16c, Nondeductible Expenses	\$11,309
--	----------

2007

Schedule K, Line 12d, Other deductions	\$81,178
--	----------

(Rent \$35,400; Telephone \$4,690; Postage \$1,679; Legal & Professional \$233; Office Lease \$1,100; Dues & Subscriptions \$189; Office Expenses \$3,935; State Replacement Taxes \$30,959; Section 179 Expense \$2,993)

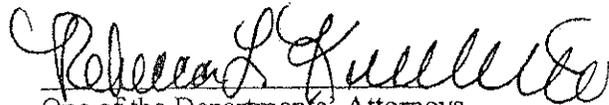
Schedule K, Line 16c, Nondeductible Expenses	\$15,136
Schedule L, Line 18, Other current liabilities	\$30,959

10. Produce the depreciation schedule of TRC Trading Inc. (FEIN: 36-3372339) for tax years ending December 31, 2004, 2005, 2006 and 2007.
11. Produce the invoice and payment documentation for expenses claimed on TRC Trading Inc.'s U.S. 1120S, Schedule M-1, Line 3b for tax years ending 2004, 2005, 2006, and 2007.
12. Produce Tyler Cain's Form W-2 and Form 1099 from TRC Trading Inc. for tax years ending 2004, 2005, 2006 and 2007.
13. Produce each Shareholder's basis schedule for each shareholder of TRC Trading Inc. The basis schedule should begin with the shareholder's capital contribution and show all

transactions occurring thereafter up to and including transactions dated December 31, 2007.

14. Identify and produce each document and communication that related to TRC Trading Inc.'s sale of any stock in 2007.
15. Produce all documents you intend to introduce as evidence in support of a motion, at an evidentiary hearing, or trial in this matter.

Respectfully Submitted,



One of the Departments' Attorneys

Jennifer Kieffer  
Rebecca L. Kulekowskis  
Special Assistant Attorneys General  
Administrative Hearings Division  
Illinois Department of Revenue  
Administrative Hearings Division  
100 West Randolph Street, Level 7-900  
Chicago, Illinois 60601  
(312) 814-1533  
(312) 814-3318

# TAB 2

ILLINOIS INDEPENDENT TAX TRIBUNAL

---

TYLER R. and TALBOT DEBUTTS	)	
CAIN,	)	
Petitioners,	)	
	)	
v.	)	No. 15-TT-63
	)	
THE ILLINOIS DEPARTMENT OF	)	
REVENUE,	)	
Respondent.	)	

---

DEPARTMENT'S FIRST SET OF INTERROGATORIES

The Department of Revenue, State of Illinois ("Department"), pursuant to Illinois Supreme Court Rules 201 and 213, requests Petitioners, Tyler R. Cain and Talbot Debutts Cain, ("Taxpayer") respond to the following interrogatories in writing and under oath within twenty-eight (28) days from the date of this request at the offices of the Department, 100 West Randolph Street, 7th Floor, Chicago, Illinois, 60601.

DEFINITIONS

The following terms used herein, whether or not a parenthetical reference to the definition number follows the term, shall have the meaning defined below.

1. "State the basis" for a claim or contention means to describe chronologically each and every fact, action or occurrence that relates to the particular claim or contention. In describing each such fact, action or occurrence: (a) do so in accordance with the definitions set forth herein; (b) identify each person, as defined herein, having knowledge of the fact, action or occurrence; (c) identify each document and communication, as those terms are defined herein, that refers or relates to the fact, action or occurrence; and (d) identify the source from which the information set forth in your response was obtained including the identity of all persons and documents which you consulted in preparing your response.
2. "Identify the person(s)" or "identify the individual(s)" means to state the full name of each person, his/her/its present or last known home and business addresses and telephone numbers, and if an individual, his/her current employer, job title and responsibilities.
3. "Identify each document" shall mean to provide, (a) the identity of each person who wrote, signed, initialed, dictated, authorized or otherwise participated in any way in the creation of the document, (b) the identity of each person who directed preparation of the documents, (c) the identity of each addressee or recipient of the document (e.g., memorandum or letter), (d) the date of the document, and (e) the present location of the original.

4. "Identify each communication" means to describe any oral or written exchange of words, thoughts or ideas to another person(s) whether person-to-person, in group, by telephone, telex or any other process, electronic, mechanical otherwise. In describing communications, (a) identify all persons present when the communication was spoken, heard, written or read, (b) identify the form of communication (written, oral, in person, electronic means), (c) state the date of the communication, and (d) identify all documents that refer or relate to the communication.
5. "Document" means all original written, recorded, graphic matters or databases (see Par. 35 *infra.*) whatsoever and all copies thereof, including, but not limited to, papers, books, records, letters, tangible things, correspondence, communications, telegrams, cables, messages (TWX, telex, cablegrams, mailgrams or other types), memoranda, notes, drafts, notations, workpapers, worksheets, transcripts, minutes, meeting schedules, attendance lists, reports, and recordings of telephone or other conversations, or of interviews, conferences, other meetings, affidavits, statements, summaries, opinions, reports, studies, surveys, forecasts, analysis, evaluations, contracts, a agreements, proposals, jottings, agendas, bulletins, notices, announcements, advertisements, instructions, charts, manuals brochures, publications, pamphlets, schedules, journals, statistical records, desk calendars, appointment books, expense reports, time cards, time records, diaries, work assignments, job descriptions, lists, tabulations, recordings (tape, disc, card, belt, fiche, wire, databases, computer program or any other types), computer printouts, data processing program library, data processing input and output, microfilm, books of accounts, records and invoices reflecting business operations, interoffice and/or interdepartmental communications, price lists, ledgers, photographs, photographic negatives, photographic slides and transparencies, pictures, drawings, sketches, graphs, maps, motion pictures, video recordings, models, local and long distance telephone records, all records kept by electronic (e.g., databases), photographic, magnetic or mechanical means, or any other device or instrument from which information can be perceived or which is used to memorialize human though speech or action. Identify and produce copies of the same document only if the original or copies contain some material, handwritten or otherwise, that is to on other copies or the original, or if they contain attachments, enclosures or documents referred to in any document produced pursuant to this Request. If any tape, disc, card, belt, fiche, wire or other electronic, mechanical recording, transcript of computer program is produced, also produce such documents as are necessary for the decoding, playing back, printing out, interpretation of, or any other documents which are necessary to convert such information into a readable, useful and/or useable format.
6. "Refer" or "relate" means, in addition to their customary and usual meaning discuss or discussing, reflect or reflecting assess or assessing, record or recording, mentioning, summarizing and/or touching upon.
7. "Person" means any natural person, a trust, estate, partnership, association, firm, company, joint venture, corporation, limited liability company, lessee, leaser, licensee, franchisee, fiduciary or other entity.
8. "And/or" shall be construed conjunctively and disjunctively so as to require the broadest response to the particular interrogatory.

17. "Business operations" mean anything relating to a company's day-to-day activities and includes manufacturing operations, e.g., running plants/mills that operate around-the-clock, selling a distinct set of products or services, serving a specific group of customers, and competing with a well-defined group of competitors.
18. "Expense" is used in the same context as in Section 162(a) of the Code allows a deduction for "ordinary and necessary expenses" incurred in carrying on a trade or business. To be deductible under Section 162(a), an expense must have a proximate and direct relationship to the taxpayer's trade or business. See, e.g., *Kornhauser v. United States*, 276 U.S. 145, 153 (1928); *Fred W. Amend Co. v. Commissioner*, 454 F.2d 399, 402 (7th Cir. 1971); *Coughlin v. Commissioner*, 203 F.2d 307, 308-309 (2d Cir. 1953).
19. "Exert influence" means bringing about a particular result; controlling power based upon a particular type of relationship (*Webster's Dictionary*, 1913, p. 760).
20. "Course of action" is a means or method by which a particular objective may be achieved.
21. "Agent" means one who by mutual consent, acts for the benefit of another; one authorized by a party to act in that party's behalf. *Gifis Law Dictionary* (1975), p. "Affiliate" means an entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with; is in a partnership or joint venture relationship with; or is a co-shareholder of a corporation, a co-member of a limited liability company, or co-partner in a limited liability partnership with the entity.
22. "Affiliate" means an entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with; is in a partnership or joint venture relationship with; or is a co-shareholder of a corporation, a co-member of a limited liability company, or co-partner in a limited liability partnership with the entity.
23. "Advertising services" includes, but is not limited to activities one engages in to communicate with customers and potential customers. Such activities include, but are not limited to, the agency(ies) used to create TV, radio or print ads, the agency(ies) used to purchase TV, radio, or print ad space or time, direct marketing campaigns (via both U.S. mail and emails) and social media (e.g., Facebook, Twitter, etc.). The term "print ad" includes newspapers, magazines, ad circulars, billboards, Internet, email, sponsorships, and placards and signage at sporting events, concerts or similar events. "Advertising services" also includes the exercise of review or approval of a subsidiary's advertising.
24. "Marketing services" includes, but is not limited to, the activities one engages in to make customers aware of its products and to convince consumers to shop and purchase at it over its competitors. These activities include communicating the value of a product or service to customers, market analysis, market research, merchandising, packaging, store displays, promotional materials, category management, shelf layouts, store layouts, website design, email and direct marketing campaigns, and promotional written and electronic materials.

25. "Cash management" services/systems includes, but are not limited to making loans, guaranteeing and co-signing loans, the issuance, repayment and repurchase of short-term and long-term debt, paying bills, writing checks, disbursement of funds, collecting receivables, preparing payroll, maintaining centralized banking accounts, investing, "sweeping" accounts, providing capital, funding acquisitions, transfers of cash into a central account, and the use of a concentration or central account to transfer funds between subsidiaries or other affiliated entities.
26. "Research and development services," includes, but is not limited to the use of research and development facilities and the providing of information regarding formulations, engineering, creating, and prototyping, product and packaging design, marketing techniques, creating and devising computer programs, architecture, quality control and trouble-shooting.
27. "Legal services" includes, but are not limited to the approval and review of contracts, intellectual property, advice or consultation regarding federal, state and local tax laws, personnel and human resource matters, real estate transactions, collections, participation in negotiations, and use of common outside legal counsel.
28. "Accounting services" includes, but is not limited to the preparation of federal, state and local tax returns, creation of annual, quarterly or monthly financial statements, performance of the internal audit function with respect to all affiliated entities, maintenance of books and records of subsidiary, and regular reporting of operating results to parent by affiliates, divisions, or subsidiaries.
29. "Employee benefits" includes, but is not limited to retirement plans, pension plans, welfare benefit plans, or other qualified plans, health insurance, life insurance, stock option plans or other non-qualified plans, worker's compensation, tuition reimbursement plan, and commuter benefits.
30. "Tax Years at Issue" means the period beginning January 1, 2004 through and including December 31, 2007. If no time period is specified in a interrogatory, you are to assume that this period applies.
31. "Taxpayer" means Tyler R. Cain and Talbot Debutts Cain.
32. "TRC Trading" means TRC Trading Inc. (FEIN: [REDACTED]).

### INTERROGATORIES

1. Identify each person, (refer to Definition 2.) who provided information in answering these interrogatories. Identify each interrogatory or part thereof, for which each person provided information.

**ANSWER:**

2. Pursuant to Illinois Supreme Court Rule 213(f) as amended, provide the name and address of each witness both lay and expert who will testify at an evidentiary hearing and all other information required for each witness.

**ANSWER:**

3. Briefly describe the business operations (Definition No. 17) of TRC Trading, Inc.

**ANSWER:**

4. Identify the address/principal place of business of TRC Trading, Inc. and the length of time the principal place of business has been at that address.

**ANSWER:**

5. Identify each and every capital contribution made to TRC Trading, Inc.

**ANSWER:**

6. Identify each person (Definition No. 2) associated with TRC Trading, Inc. who is most familiar with its business operations.

**ANSWER:**

7. Identify each financial institution and/or bank account (i.e. Northern Trust, Goldman Sachs, etc.) used by TRC Trading, Inc.

**ANSWER:**

8. Identify each person (Definition No. 2) authorized to distribute money from any account identified in Interrogatory No. 7.

**ANSWER:**

9. Identify each person (Definition No. 2) charged with the financial operations (Definition No. 13) of TRC Trading, Inc.

ANSWER:

10. Identify each person (Definition No. 2) responsible for preparing and filing any returns (U.S. 1120S, IL 1120 ST, etc.) for TRC Trading, Inc.'s 2004 through 2007.

ANSWER:

11. Identify where any and all documents of TRC Trading Inc. were located from 2004 through and including 2007.

ANSWER:

12. Identify where any and all of TRC Trading Inc.'s business operations meetings were held from 2004 through and including 2007.

ANSWER:

13. Identify where any and all of TRC Trading Inc.'s advisors (i.e. bankers, accountants, lawyers, etc.) were located from 2004 through and including 2007.

ANSWER:

14. Identify the location of any and all depreciable assets identified on TRC Trading Inc.'s U.S. 1120 S, Schedule L Line 10(a).

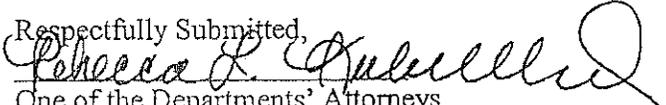
ANSWER:

15. Identify all documents and persons who can explain the medical insurance expense taken by TRC Trading, Inc. on its U.S. 1120 S, Schedule K, Line 16c.

ANSWER:

16. Identify the physical location of the stock that was sold on November 27, 2007, as identified on U.S. 1120 S, Schedule D, Part II, Line 7.

ANSWER:

Respectfully Submitted,  
  
One of the Departments' Attorneys

Jennifer Kieffer  
Rebecca L. Kulekowskis  
Special Assistant Attorneys General  
Administrative Hearings Division  
Illinois Department of Revenue  
Administrative Hearings Division  
100 West Randolph Street, Level 7-900  
Chicago, Illinois 60601  
(312) 814-1533  
(312) 814-3318

# TAB 3

**In The Matter Of:**

*Tyler Cain vs.  
Illinois Department of Revenue*

---

*Robert M. Jacobson  
February 17, 2009*

---

*Wichmann Klawitter Reporting, Ltd.  
79 W Monroe St.  
Suite 925  
Chicago, IL 60603*

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1 STATE OF ILLINOIS )  
 2 COUNTY OF C O O K ) SS:  
 3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 4 COUNTY DEPARTMENT - LAW DIVISION  
 5 TAX AND MISCELLANEOUS REMEDIES SECTION  
 6 TYLER CAIN, )  
 7 ) Plaintiff, )  
 8 -vs- ) No. 2006 L 050986  
 9 BRIAN HAMER, in his official )  
 10 capacity as DIRECTOR, ILLINOIS )  
 11 DEPARTMENT OF REVENUE, the )  
 12 ILLINOIS DEPARTMENT OF REVENUE, )  
 13 and JUDITH BAAR TOPINKA, in her )  
 14 official capacity as STATE )  
 15 TREASURER OF THE STATE OF )  
 16 ILLINOIS, )  
 17 Defendants. )  
 18 The deposition of ROBERT M. JACOBSON, called as a  
 19 witness for examination, taken pursuant to the provisions of  
 20 the Code of Civil Procedure and the Rules of the Supreme  
 21 Court of the State of Illinois pertaining to the taking of  
 22 depositions for the purpose of discovery, taken before  
 23 Daniel M. Priscu, a Certified Shorthand Reporter of the  
 24 state of Illinois, at 100 W. Randolph Street, 13th Floor,  
 Chicago, Illinois, on the 17th day of February, A.D. 2009.

1 APPEARANCES:  
 2  
 3 REED, SMITH, LLP,  
 4 (10 South Wacker Drive,  
 5 Chicago, Illinois 60606-7507,  
 6 312-207-3894), by:  
 7 Mr. Michael J. Wynne,  
 8 Mr. Timothy E. Wieher,  
 9 appeared on behalf of the Plaintiff;  
 10  
 11 OFFICE OF THE ATTORNEY GENERAL  
 12 STATE OF ILLINOIS  
 13 (100 West Randolph Street,  
 14 Chicago, Illinois 60601,  
 15 312-814-4142), by:  
 16 Mr. Michael Coveny,  
 17 Mr. Mohib Husain,  
 18 Assistant Attorneys General,  
 19 appeared on behalf of the Defendants.  
 20  
 21  
 22  
 23  
 24

I N D E X

1		
2	WITNESS	EXAMINATION
3	ROBERT M. JACOBSON	
4	By Mr. Coveny	4, 24
5	By Mr. Wynne	16, 24
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15	Deposition Exhibit No. 1	10
16	Deposition Exhibit No. 2	12
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E X H I B I T S

13	NUMBER	PAGE
14		
15	Deposition Exhibit No. 1	10
16	Deposition Exhibit No. 2	12

1 (Witness sworn.)  
 2 ROBERT M. JACOBSON,  
 3 called as a witness herein, having first been duly sworn,  
 4 was examined and testified as follows:  
 5 MR. COVENY: We're here on the deposition of  
 6 Robert Jacobson in the matter of Tyler Cain, C-a-i-n, versus  
 7 Brian Hamer and the Illinois Department of Revenue, case  
 8 number 2006 L 050986.  
 9 EXAMINATION  
 10 BY MR. COVENY:  
 11 Q. Can you state your name for the record.  
 12 A. Robert Jacobson.  
 13 Q. Can you spell that?  
 14 A. J-a-c-o-b-s-o-n; Robert, R-o-b-e-r-t.  
 15 Q. And, Mr. Jacobson, what's your occupation?  
 16 A. I'm a CPA.  
 17 Q. And how long have you been a CPA?  
 18 A. Since August of '87.  
 19 Q. And are you acquainted with Tyler Cain?  
 20 A. Yes, I am.  
 21 Q. And how long have you known Mr. Cain?  
 22 A. Since around '97, '98.  
 23 Q. Can you describe in general terms what type of  
 24 work you have done for him?

1 A. I've done business tax returns, starting with, I  
2 believe, 1995, and getting some returns amended for him  
3 previously, and then doing personal work for him around  
4 2004.

5 Q. So during the relevant time period at issue in  
6 this case, which I believe is 1996 through 2004 tax years,  
7 you didn't prepare his personal income tax returns?

8 A. I did not prepare his personal returns, no. Maybe  
9 the last year in the case. I think it was 2004, I think,  
10 was on your list.

11 Q. Can you give me a general ballpark figure of the  
12 amount of fees that Tyler Cain has paid you for the relevant  
13 time period?

14 A. Prior to 2004?

15 Q. Right.

16 A. About \$30,000 or so a year. It could fluctuate,  
17 depending on what he needs. Much less early on.

18 Q. That was per year?

19 A. Yes.

20 Q. I'm going to show you a document that I received  
21 from Tyler Cain's attorneys in response to discovery, and  
22 you may not be familiar with the document itself, but if you  
23 could take a second to look over the document and tell me if  
24 the contents are familiar?

1 coordinate family investing to meet both growth needs and  
2 cash flow needs.

3 Q. Were they set up to minimize future estate tax  
4 exposure?

5 A. Part of it was the estate planning from the  
6 attorneys, yes.

7 Q. Do you know what filing address most of these  
8 entities used?

9 A. 51 North Green Bay on most of the entities. I'm  
10 not sure if TRC Trading, Inc. originally used that address  
11 or not.

12 Q. I should have asked this before, but did you  
13 prepare most of the returns or all of those returns?

14 A. I prepared the entity returns that you've listed.

15 Q. And you said the filing address for most of them  
16 was the Lake Forest address in Illinois?

17 A. Correct.

18 Q. Did you prepare Illinois returns for these  
19 entities?

20 A. For TRC Trading, Inc. and TRC, LLC, yes. The  
21 other ones were investment partnerships that had no Illinois  
22 source income.

23 Q. So for those investment partnerships, do you know  
24 if any Illinois returns were prepared and filed by someone

1 A. Yes.

2 Q. Could you tell me basically what those entities  
3 listed on that document are?

4 A. They are a list of partnerships predominantly that  
5 own investment securities for Tyler and his family.

6 There is one that is an S corp that has some  
7 investment securities in it, and we've got listed three  
8 years of Florida intangible returns, and that's it.

9 Q. Did you prepare the Florida intangible returns?

10 A. No, we did not.

11 Q. Do you know who did?

12 A. I'm not positive, but I believe it was Scott  
13 Cohen.

14 Q. Why were these partnerships created?

15 A. They were created originally for family wealth  
16 planning and were funded by just Abbott lab stock.

17 Q. Can you go into a little more detail what tax  
18 benefits, if any, did they provide at the federal income tax  
19 level?

20 A. At the federal income tax level?

21 Q. Yes.

22 A. For the creation of the partnerships?

23 Q. Yes.

24 A. None, really. They were set up as a means to

1 else?

2 A. Not that I know of.

3 Q. Do you know when the investment partnership rules  
4 came into effect?

5 A. 2004, 2005. But these are all created as Delaware  
6 partnerships.

7 Q. For the entities that you did use an Illinois  
8 address for, do you remember why you chose an Illinois  
9 address?

10 A. Because I know that Tyler had some serious  
11 problems with getting mail in and out of Florida, so when we  
12 used the address, which is the address that we had started  
13 with when we first took over the returns, it had the  
14 Illinois address.

15 I did inquire, I think, at that time do you want  
16 Illinois or do you want Florida, and I know we had mail  
17 problems in Florida.

18 Q. Did you investigate whether these entities would  
19 be taxable in Florida?

20 A. Yes. They had an attorney originally that was  
21 doing Florida intangibles tax consulting for them.

22 Q. Do you remember what the result of that inquiry  
23 was, whether or not these would have been taxable in  
24 Florida?

1 A. Yes. I was told by the attorneys that it's not  
 2 taxable in the state of Florida.  
 3 Q. But notwithstanding that these entities were not  
 4 taxable in Florida, some of them still chose an Illinois  
 5 address as a filing address?  
 6 A. Mailing address.  
 7 Q. A mailing address?  
 8 A. Correct.  
 9 Q. But some of them also filed Illinois income tax  
 10 returns; is that correct?  
 11 A. TRC, LLC, I believe, filed an Illinois income tax  
 12 return, because really that was created as an Illinois LLC.  
 13 The others, I believe, were Delaware.  
 14 TRC Trading, Inc. was originally formed as an  
 15 Illinois corporation. And TRC Trading, Inc., being a  
 16 corporation, did not follow the investment partnership  
 17 rules, so it had no choice but to file in Illinois.  
 18 Q. So most of the so-called "investment partnerships"  
 19 did not file Illinois income tax returns?  
 20 A. Correct.  
 21 Q. Do you know how much approximate Illinois income  
 22 tax would have been paid by any of the entities for the ones  
 23 that did file during the relevant period?  
 24 A. You mean calculated tax?

1 document. Do you recognize that?  
 2 A. Yes.  
 3 Q. Can you describe what that is?  
 4 A. That's page one of the partnership return for TDC  
 5 Investments, L.P.  
 6 Q. Did you prepare that return?  
 7 A. Yes, I did.  
 8 Q. And was that the initial year return?  
 9 A. Yes, it should be.  
 10 Q. And what year was that?  
 11 A. 2002.  
 12 Q. Why did you choose Illinois for that partnership?  
 13 A. Well, we've only used Illinois as a mailing  
 14 address for all of them, the same mailing address.  
 15 Q. So even though Tyler Cain has allegedly changed  
 16 his address to Florida in 1996, or as of 1996, you still  
 17 chose an Illinois address for that entity in 2002?  
 18 A. All mailing, which is not uncommon for us to get  
 19 mail in Illinois for clients. Some have even used our firm  
 20 mailing address.  
 21 Q. Let me ask you a question or two about TRC  
 22 Trading. You mentioned that entity before.  
 23 MR. WYNNE: Are you marking this as an exhibit?  
 24 MR. COVENY: Yes, I am. I keep forgetting.

1 Q. Just a ballpark figure of the total income tax  
 2 they would have paid to the State of Illinois from 1996 --  
 3 A. No.  
 4 Q. -- you don't have that?  
 5 A. No.  
 6 Q. Do you know if any of the partnerships were  
 7 created or formed after 1996?  
 8 A. Yes.  
 9 MR. COVENY: I wanted to enter that as an exhibit.  
 10 Mark that as Exhibit 1.  
 11 (WHEREUPON, Deposition  
 12 Exhibit No. 1 was  
 13 marked for identification.)  
 14 MR. WYNNE: If I may, for the record, the  
 15 questions just now have been with regard to Exhibit 1, which  
 16 you are now done with?  
 17 MR. COVENY: Correct. Well, I may not be done  
 18 with it, but I will try to refer to which exhibit I'm  
 19 referring to.  
 20 BY MR. COVENY:  
 21 Q. But when I say "generally the partnerships,"  
 22 that's what I'm referring to, the entities on that list.  
 23 A. Yes.  
 24 Q. I'm going to show you the first page of that

1 That's Exhibit 2.  
 2 (WHEREUPON, Deposition  
 3 Exhibit No. 2 was  
 4 marked for identification.)  
 5 BY MR. COVENY:  
 6 Q. Mr. Jacobson, before you mentioned an entity  
 7 called TRC Trading, Inc., which you said was an  
 8 S corporation.  
 9 A. Yes.  
 10 Q. Did you prepare that entity's income tax returns?  
 11 A. No, I did not.  
 12 Q. Are you familiar with that entity?  
 13 A. Yes.  
 14 Q. Do you recall why it was created as an S  
 15 corporation?  
 16 A. Originally?  
 17 Q. Yes.  
 18 A. No. I believe it was originally where he did all  
 19 of his active trading when he held a seat on one of the  
 20 exchanges.  
 21 Q. Is that entity similar to the partnerships in  
 22 terms of its types of income that it receives?  
 23 A. Originally or --  
 24 Q. Well, excuse me, during the relevant period, which



1 work you do for them.  
 2 A. I'll handle all of their partnership returns.  
 3 I'll handle as much as going down to the family office  
 4 services including bill paying, will handle making sure all  
 5 types of returns get filed.  
 6 Q. Are these individuals?  
 7 A. Individuals and their entities, predominantly  
 8 individuals, but it could be their businesses.  
 9 Q. Are these Illinois resident individuals to your  
 10 knowledge?  
 11 A. No. Of my top five clients, they're probably -- I  
 12 believe every one of them is out of state.  
 13 I've got two in New York, two in Florida, one in  
 14 D.C., one in California, so my practice is across country.  
 15 Q. When you said some of your clients use your  
 16 office's addresses for tax returns, are these some of those  
 17 clients?  
 18 A. Yes. Most of them will use either our office  
 19 address or a P.O. Box so the tax information will come  
 20 directly to us.  
 21 Q. Had you considered them to be Illinois residents  
 22 because they use your address?  
 23 A. No.  
 24 Q. In your experience does it matter to your clients

1 whether you are in Illinois or in another state?  
 2 A. No. It has no relevance. I don't think I have  
 3 ever lost a client because they've moved out of state.  
 4 Q. With regard to the Florida intangibles tax, do you  
 5 have a general knowledge of when that tax applies?  
 6 A. Yes.  
 7 Q. Is it a correct statement to your understanding  
 8 that you would only pay that tax if you were a Florida  
 9 resident?  
 10 A. Correct.  
 11 Q. With regard to TRC Trading, Inc., you didn't  
 12 prepare the returns?  
 13 A. Correct.  
 14 Q. But you've seen the returns?  
 15 A. Correct.  
 16 Q. And you understand there's a rent deduction, rent  
 17 expense shown on there?  
 18 A. Yes, correct.  
 19 Q. Are there any limitations on when an S corporation  
 20 can deduct rent?  
 21 A. Yes. In Tyler's case he has a home office, a  
 22 separate structure, from what I understand, in Florida, but  
 23 he cannot rent -- under IRS rules, you cannot pay yourself  
 24 rent in an S corporation to a home office. So the only rent

1 that he could have had if he was going to use the home  
 2 office out of Florida is in Illinois.  
 3 Q. And to your understanding the address for TRC  
 4 Trading, just the Market Square address, is that the same  
 5 address that TRC Trading has used for all of the returns  
 6 you've reviewed?  
 7 A. As far as I remember, yes.  
 8 Q. And to your understanding TRC Trading was the S  
 9 corp he had when he had a seat on the exchange here?  
 10 A. Yes, that's correct.  
 11 Q. Now, you also said that he was paid a salary by  
 12 TRC Trading?  
 13 A. Correct.  
 14 Q. Do you know whether or not that salary continued  
 15 to be paid?  
 16 A. No. The salary stopped.  
 17 Q. And why was that, do you know?  
 18 A. Well, it appeared that he kept paying the salary  
 19 because that's what he always did and he thought he had to.  
 20 He was incurring payroll taxes on it. But he thought he  
 21 always had to pay himself a salary.  
 22 When I told him back in '02, this was before I  
 23 started working on his personal return, and I believe my  
 24 conversation was with the other accountant, I said, Why are

1 you continuing to issue payroll? All he is doing is lending  
 2 his company money to turnaround and pay him. And they  
 3 realized that they should be putting a stop to it. There  
 4 was no purpose to be issuing payroll.  
 5 Q. You're familiar with the defined benefit plan  
 6 deduction the S corp was taking?  
 7 A. Yes.  
 8 Q. Do you know if that continued?  
 9 A. It continued through '03 or '04. I believe it was  
 10 '04.  
 11 Q. Do you know the reasons why it stopped?  
 12 A. Yes. I consulted with him, and I don't know  
 13 whether the prior accountant just left or whether I was  
 14 working with him on it. There was no reason to keep that  
 15 liability going. There was no business going on anymore,  
 16 that it should be closed, and they closed it.  
 17 Q. When you reviewed the returns of TRC Trading,  
 18 Inc., did you get a sense of the trading activity that the  
 19 entity conducted?  
 20 A. Yes. It was minimal amounts of trading.  
 21 For example, there may only be from '99, when I  
 22 looked through the returns, from '99 through 2004, I think  
 23 the highest number of sales of stock was ten for the whole  
 24 year.

1 Before that I didn't have a copy of the Schedule D  
2 to tell you, but there was not active trading going on.  
3 Q. And to your knowledge TRC Trading has never traded  
4 for anybody other than Mr. Cain's accounts?  
5 A. That's correct.  
6 Q. The type of income TRC Trading, you stated, was  
7 interest dividends and capital gains?  
8 A. TRC Trading, Inc.?  
9 Q. Yes.  
10 A. Correct.  
11 Q. You began advising Mr. Cain on his personal taxes  
12 in 2004; is that right?  
13 A. That sounds correct.  
14 Q. To your knowledge was there a reason why Illinois  
15 nonresident returns were not filed for Mr. Cain?  
16 A. I don't believe he would have had any Illinois  
17 source business income.  
18 The only Illinois source -- any kind of income or  
19 loss, was the loss being generated by TRC Trading, Inc. So  
20 more than likely the prior accountant said, I don't need to  
21 file an Illinois return just to file for a loss. There's no  
22 NOL provisions in Illinois to carry it forward or do  
23 anything with it.  
24 Q. By "NOL" you mean net operating loss?

1 A. Correct, net operating loss.  
2 Q. With regard to the partnerships, would that be --  
3 let me ask you how many partnerships we have.  
4 We have TRC One Investments?  
5 A. Correct.  
6 Q. What is that entity about?  
7 A. TRC One was originally formed with just Abbott lab  
8 stock. Through my meetings with Tyler and discussions with  
9 Tyler, we talked about how to diversify the family's  
10 holdings, that no matter how good of a stock Abbott might  
11 be, it was just simply too risky to keep so much of your  
12 wealth in one security.  
13 So throughout with TRC One as the beginning point  
14 in a lot of this, everything we started doing, and I would  
15 say after Enron happened is when there was a little more  
16 urgency to it, we diversified stock, and that's where TRC  
17 One came into.  
18 Q. In looking into this, did you identify the origin  
19 of the Abbott stock holdings?  
20 A. I don't remember whether it was inheritance or  
21 gift, but it was originally from family.  
22 Q. But you know then it was not acquired by --  
23 A. It was not purchased. It was not purchased in the  
24 entity. It was originally contributed to the entity.

1 Q. By Mr. Cain?  
2 A. By Mr. Cain and some of his trusts.  
3 Q. Were any of these entities, the partnership  
4 entities, created on the advice of Florida counsel to your  
5 knowledge?  
6 A. Yes.  
7 Q. Do you know which ones?  
8 A. I believe TRC, LLC. TRC Investments, LLC was  
9 created on the advice of both Florida as estate planning  
10 advisers.  
11 Q. In your dealings with Mr. Cain, how does he  
12 normally contact you?  
13 A. Phone and e-mail.  
14 Q. Is that communication exclusively from Florida?  
15 A. No. He can call me or phone me or e-mail from  
16 anywhere in the world.  
17 Q. Do you know him to travel frequently?  
18 A. Yes. He travels quite extensively.  
19 Q. For your purposes of rendering the services to  
20 him, does it matter to you where he is located?  
21 A. No, absolutely not. I have a client who is in  
22 Hong Kong. I handle all of his work. I don't believe we  
23 ever met face to face.  
24 MR. WYNNE: I don't have any further questions.

1 MR. COVENY: I have one.  
2 FURTHER EXAMINATION  
3 BY MR. COVENY:  
4 Q. Mr. Jacobson, do you have any idea of the amount  
5 of pension deductions that TRC Trading would have taken  
6 approximately during the relevant '96 to 2004 period?  
7 A. In total?  
8 Q. In total, or maybe if you could give me an average  
9 year.  
10 A. I could figure it out. I would have to look  
11 through all the prior returns, because I know it varied  
12 greatly.  
13 It ballooned in 2002 -- 2001, '02, '03 and '04.  
14 When the market dropped, I think that's probably what caused  
15 the increase.  
16 MR. WYNNE: I have a couple follow-ups.  
17 FURTHER EXAMINATION  
18 BY MR. WYNNE:  
19 Q. You were asked in your earlier testimony by  
20 Mr. Coveny whether you knew the approximate amount of tax  
21 that would have been paid to Illinois if the partnership  
22 entities had filed, and I believe you responded no.  
23 The reason why they would not have filed before  
24 2004 would have been what?

1 A. They were Delaware partnerships with no business  
 2 connection to the state of Illinois.  
 3 Q. And after 2004 you made reference to investment  
 4 partnerships. What is your understanding of the  
 5 requirements of investment partnership after 2004?  
 6 A. Investment partnerships for Illinois, defining  
 7 investment partnerships?  
 8 Q. Right, yes.  
 9 A. The question originally, I believe, was asked was  
 10 when I use the term "investment partnership," it's also a  
 11 federal concept.  
 12 Q. With reference to Illinois and the statutory  
 13 change you referenced in 2004, what is your understanding of  
 14 that?  
 15 A. Starting in 2004 it was in the statute that if you  
 16 have a partnership that only has portfolio-type assets,  
 17 stocks, bonds, tradeable securities or flow through entities  
 18 that own those types of securities, that is no longer  
 19 required to file a tax return in the state of Illinois.  
 20 It's not subject to tax.  
 21 Q. But for years prior to 2004 you did not need a law  
 22 like that in order to conclude that the partnerships didn't  
 23 have to file?  
 24 A. Correct. That's not uncommon.

1 MR. WYNNE: No further questions.  
 2 MR. COVENY: I have nothing.  
 3 MR. WYNNE: We don't waive it.  
 4 (DEPONENT SAITH FURTHER NOT.)  
 5  
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1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 2 COUNTY DEPARTMENT - LAW DIVISION  
 3 TAX AND MISCELLANEOUS REMEDIES SECTION  
 4 TYLER CAIN, )  
 5 Plaintiff, )  
 6 -vs- ) No. 2006 L 050986  
 7 BRIAN HAMER, in his official )  
 8 capacity as DIRECTOR, ILLINOIS )  
 9 DEPARTMENT OF REVENUE, the )  
 10 ILLINOIS DEPARTMENT OF REVENUE, )  
 11 and JUDITH BAAR TOPINKA, in her )  
 12 official capacity as STATE )  
 13 TREASURER OF THE STATE OF )  
 14 ILLINOIS, )  
 15 Defendants. )  
 16  
 17  
 18  
 19 I hereby certify that I have read the foregoing  
 20 transcript of my deposition given at the time and place  
 21 aforesaid, consisting of Pages 1 to 26, inclusive, and I do  
 22 again subscribe and make oath that the same is a true,  
 23 correct and complete transcript of my deposition so given as  
 24 aforesaid, and includes changes, if any, so made by me.  
 Robert M. Jacobson  
 SUBSCRIBED AND SWORN TO  
 before me this day  
 of , A.D. 2009.  
 Notary Public

1 STATE OF ILLINOIS )  
 2 ) SS:  
 3 COUNTY OF C O O K )  
 4  
 5 I, DANIEL M. PRISCU, a Certified Shorthand  
 6 Reporter of said State and County  
 7 do hereby certify:  
 8  
 9 That previous to the commencement of the  
 10 examination of the witness, the witness was duly  
 11 sworn to testify the whole truth concerning the  
 12 matters herein;  
 13  
 14 That the foregoing deposition transcript was  
 15 reported stenographically by me, was thereafter  
 16 reduced to typewriting under my personal direction  
 17 and constitutes a true record of the testimony given  
 18 and the proceedings had;  
 19  
 20 That the said deposition was taken before me at  
 21 the time and place specified;  
 22  
 23 That I am not a relative or employee or  
 24 attorney or counsel, nor a relative or employee of

1 such attorney or counsel for any of the parties  
2 hereto, nor interested directly or indirectly in the  
3 outcome of this action.

4 IN WITNESS WHEREOF, I do hereunto set my hand  
5 at Chicago, Illinois, this day of , 2009.

8 Certified Shorthand Reporter  
9 Certificate No. 84-003982.

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**Illinois Department of Revenue**

	24:6	approximate (2)	4:6	contact (2)
\$	97 (1)	9:21;24:20	Cain's (2)	15:19;23:12
\$30,000 (1)	4:22	approximately (1)	5:21;21:4	contents (1)
5:16	98 (1)	24:6	calculated (1)	5:24
0	4:22	April (2)	9:24	continued (3)
	99 (2)	15:22,22	California (1)	19:14;20:8,9
	20:21,22	area (1)	17:14	continuing (1)
		14:11	call (1)	20:1
02 (2)	A	around (2)	23:15	contributed (1)
19:22;24:13		4:22;5:3	called (2)	22:24
03 (2)	Abbott (4)	assets (2)	4:3;12:7	conversation (1)
20:9;24:13	6:16;22:7,10,19	15:7;25:16	came (2)	19:24
04 (3)	absolutely (1)	attorney (2)	8:4;22:17	coordinate (1)
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1	acquainted (1)	average (1)	carry (1)	corporation (8)
	4:19	24:8	21:22	9:15,16;12:8,15;13:11;
1 (4)	acquired (1)	B	case (4)	14:12;18:19,24
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1040 (1)	across (1)	back (1)	cash (1)	23:4
15:5	17:14	19:22	7:2	country (1)
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5:2	12:19;21:2	24:13	24:14	couple (1)
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2 (2)	7:7,10,15,16;8:8,9,12,12,	7:9	9:17	CPA (2)
12:1,3	14;9:5,5,6,7;11:14,14,16,	began (1)	choose (1)	4:16,17
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24:13	19:3,4,5	beginning (1)	chose (3)	6:14,15;8:5;9:12;10:7;
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11:11,17;24:13	17:16	benefit (3)	client (2)	creation (1)
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8:5	23:10	bonds (1)	20:16,16	
2006 (1)	advising (1)	25:17	Cohen (1)	
4:8	21:11	both (2)	6:13	
3	again (1)	7:1;23:9	communication (1)	
	16:12	Box (1)	23:14	
3 (1)	allegedly (1)	17:19	company (1)	
14:16	11:15	Brian (1)	20:2	
5	always (3)	4:7	concept (1)	
	13:20;19:19,21	business (4)	25:11	
51 (1)	amended (1)	5:1;20:15;21:17;25:1	conclude (1)	
7:9	5:2	businesses (1)	25:22	
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# TAB 4

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - LAW DIVISION  
TAX & MISCELLANEOUS REMEDIES SECTION

COPY

TYLER R. CAIN and TALBOT )  
D. CAIN, )

Plaintiffs, )

-vs- )

No. 2006 L 050986

BRIAN HAMER, in his )  
official capacity as )  
DIRECTOR, ILLINOIS )  
DEPARTMENT OF REVENUE; )  
THE ILLINOIS DEPARTMENT )  
OF REVENUE; and JUDITH )  
BAAR TOPINKA, in her )  
official capacity as )  
STATE TREASURER of the )  
State of Illinois, )

Defendants. )

The discovery deposition of **TYLER R.**

**CAIN**, taken before MAUREEN A. WOODMAN, a  
Certified Shorthand Reporter and Notary Public in  
and for the County of Cook and State of Illinois,  
pursuant to the Illinois Code of Civil Procedure  
and the Rules of the Supreme Court thereof,  
pertaining to the taking of depositions for the  
purpose of discovery at 10 South Wacker Drive,  
Chicago, Illinois, on December 22, 2008, at the  
hour of 10:00 o'clock a.m.

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PRESENT:

REED SMITH, LLP.  
BY: MR. MICHAEL J. WYNNE  
10 South Wacker Drive  
Chicago, Illinois 60606,

on behalf of the Plaintiffs;

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS  
BY: MR. MICHAEL COVENY and  
MR. MOHIB HUSAIN  
100 West Randolph  
Chicago, Illinois 60601,

on behalf of the Defendants.

ALSO PRESENT:

Mr. Tim Wieher  
Ms. Talbot Cain

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I N D E X

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(Witness was duly sworn.)

TYLER CAIN,

called as a witness herein, after having been first duly sworn, was examined and testified as follows:

MR. COVENY: This matter is the deposition of Tyler Cain, Tyler R. Cain, taken pursuant to notice that was sent December 5th, 2008. The case caption is Tyler R. Cain and Talbot D. Cain, plaintiffs, number 06 L 050986, versus Brian Hamer and the Illinois Department of Revenue, which is pending in the Circuit Court of Cook County.

EXAMINATION

BY MR. COVENY:

Q. Could you state your full name.

A. Tyler R. Cain.

Q. And, Mr. Cain, where were you born?

A. Evanston Hospital.

Q. Is that in Illinois?

A. Illinois.

Q. And did you grow up in Illinois?

A. Yes.

1 Q. Did you attend high school here?

2 A. Yes.

3 Q. What high school?

4 A. New Trier.

5 Q. And did you attend college -- where did  
6 you attend college?

7 A. I went to the University of Arizona in  
8 Tucson for two years. Went to the University of  
9 Madrid audited classes for one year in Madrid,  
10 Spain, and came back and finished at Lake Forest  
11 College.

12 Q. That's where your degree is from, Lake  
13 Forest?

14 A. Yes, bachelor of arts.

15 Q. Did you attend any graduate school?

16 A. No.

17 Q. And then after you graduated from Lake  
18 Forest or got your degree where did you live?

19 A. I lived in Chicago. We were  
20 married -- well, I lived in Chicago.

21 Q. Okay. And have you up until 1995, which  
22 I believe is the year that you stopped filing  
23 Illinois returns and you maintain that you  
24 switched residencies to Florida, did you

1 continuously live in Illinois up until that  
2 point?

3 A. No. I -- we were living in  
4 Florida -- no, yes. Yes, we were living -- we  
5 were living in Illinois. We were going down to  
6 Florida a lot more and more. But, no, we were  
7 living in Illinois.

8 Q. I was also asking was there some other  
9 third place or location where you might have  
10 lived?

11 A. No, no, no.

12 Q. Okay. After --

13 A. Actually can I amend that.

14 MR. WYNNE: Yes.

15 THE WITNESS: Was our house completed in.

16 MRS. CAIN: You lived in New York for six  
17 months.

18 THE WITNESS: I lived in New York for six  
19 months. I went down to a training program. Then  
20 I was in Illinois.

21 BY MR. COVENY:

22 Q. Do you remember what year?

23 A. It would have been 1965 I lived in New  
24 York City for six months roughly. But then our

1 house was completed in --

2 MRS. CAIN: 1990.

3 THE WITNESS: In 1990. I'm sorry. I think  
4 you said '95.

5 BY MR. COVENY:

6 Q. Right.

7 A. We started living in Florida full-time  
8 in 1990. We were going down to Florida more and  
9 more up through 1990.

10 Q. Okay. Would it be fair to say that you  
11 were born and raised in Illinois?

12 A. Yes.

13 Q. After you graduated from Lake Forest  
14 College, what was your occupation?

15 A. I was a stockbroker, registered rep at  
16 Whiteweld and Company which is no longer. It's  
17 now been absorbed by Merrill Lynch. Was way  
18 back.

19 Q. How long did you hold that?

20 A. Ten years.

21 Q. And then after that?

22 A. I went off on my own and joined the CBOE  
23 which had just started. And was there for, I  
24 don't know, 15 years.

1 MR. WYNNE: That's the Chicago Board of  
2 Options Exchange?

3 THE WITNESS: Chicago Board of Options  
4 Exchange, yes.

5 BY MR. COVENY:

6 Q. Do you have any children?

7 A. Yes.

8 Q. How many?

9 A. Two daughters.

10 Q. And where do they reside?

11 A. One lives in Lake Bluff and one lives in  
12 Cincinnati.

13 Q. Did they -- did they attend grade school  
14 in Illinois?

15 A. Yes.

16 Q. And high school as well?

17 A. No, they both went away to Madeira,  
18 which is in -- M-A-D-E-I-R-A, School, which is in  
19 McLean, Virginia.

20 Q. What would you say your current  
21 occupation is?

22 A. Retired.

23 Q. Was that also your occupation or status  
24 in 1995, which was the year we'll probably

1 frequently refer to, 1995?

2 A. I would say 1995 I was retired also.

3 Yes.

4 Q. Where does most of your income come  
5 from?

6 A. Dividends and interests. As a matter of  
7 fact, all of it.

8 MR. WYNNE: Let me clarify. When you say  
9 today, you are referring through the end of the  
10 year including the notice?

11 MR. COVENY: Actually, I'm referring to the  
12 present time. But he can answer it either way.  
13 But I think that there is some relevance to the  
14 present time because we've talked about this  
15 before, the question of abandoning a domicile.

16 MR. WYNNE: In that case I will have a  
17 continuing objection to anything for any year  
18 after the last date, including the notice.

19 MR. COVENY: Okay.

20 THE WITNESS: I guess I shouldn't say all,  
21 but a lot, most. That's fair.

22 BY MR. COVENY:

23 Q. Mr. Cain, can I ask you to take a look  
24 at this document?

1 A. Uh-huh.

2 MR. COVENY: You've seen that, haven't you,  
3 Mike?

4 MR. WYNNE: Is this something we prepared.

5 MR. COVENY: Yes. I've got an extra copy,  
6 Mike. Here it is. There you go.

7 BY MR. COVENY:

8 Q. Mr. Cain, have you seen that document  
9 before?

10 A. Have I seen this?

11 Q. Yes.

12 A. No.

13 Q. But you've had a chance to look it over  
14 just now?

15 A. Quickly, yes.

16 Q. Would you say this document accurately  
17 represents your partnership interests?

18 A. Uh-huh. Yes.

19 Q. Going back to that other question about  
20 where most of your income comes from, would it be  
21 fair to say most of your income is generated from  
22 these entities in total?

23 A. No, it would not. Because I have  
24 securities outside of these entities. No, it

1 would not.

2 Q. Let me follow that up with an  
3 observation that, you know, these entities,  
4 partnership entities, generate interests,  
5 dividends, as well as capital gain, so much of  
6 that -- the capital gain which could be large  
7 did -- could flow through these entities that you  
8 received?

9 MR. WYNNE: Object. Capital gain from what?

10 MR. COVENY: The partnership entities had  
11 large capital gains on their income tax returns.  
12 And my point is that sometimes people will only  
13 think of the dividends and interests because the  
14 capital gains will show up in a different place  
15 on the return but they are still flowing through  
16 the partnerships. So I want to --

17 MR. WYNNE: You are amending your question  
18 to say his income was from interests, dividends  
19 and capital gains?

20 MR. COVENY: Right.

21 THE WITNESS: Yes.

22 BY MR. COVENY:

23 Q. Maybe I'm not asking it correctly. Let  
24 me back up.

1                   Most of your income is from  
2 interests, dividends and capital gains, one of  
3 those three; is that correct?

4           A.   That's correct.  Capital gains,  
5 interests, dividends, yes.

6           Q.   But --

7           A.   Yes.  I'm trying to think.  Do I have  
8 outside investments that have been a significant  
9 factor over time, and the answer -- I don't know  
10 how to answer this.  But let me give you an  
11 example.  Have I sold something and had a great  
12 big, you know, whoop-dee-doo gain from something  
13 that a private -- and the answer is nothing  
14 significant.  This would be entities where -- and  
15 things outside, like a hundred shares of Abbott  
16 Laboratories, not in these partnerships, in my  
17 name.

18          Q.   So you do have significant investments  
19 outside of these partnerships?

20          A.   I do not have -- yes, I have significant  
21 holdings, investments, common stock.

22          Q.   That you would hold in your own name as  
23 opposed to one of the partnerships?

24          A.   Yes.

1 Q. Is it fair to say that most of these  
2 entities have an Illinois address on their tax  
3 returns, on their federal income tax returns?

4 A. I don't.

5 MR. WYNNE: Objection, you have got the  
6 returns. You know what addresses are on them.

7 MR. COVENY: He can answer.

8 THE WITNESS: I don't...

9 BY MR. COVENY:

10 Q. Could you describe what most of these  
11 partnerships do?

12 A. They're family partnerships set up by  
13 McDermott, Will & Emery over a period of time.  
14 And what they do is, they are for the purpose of  
15 transferring assets from my name to our  
16 children's name.

17 Q. Would it be fair to say that's -- they  
18 were created mostly for estate planning purposes?

19 A. Estate planning, yes.

20 Q. Among these entities is TRC III  
21 Investments, LP. Scratch that question.

22 The entity I was going to ask  
23 about is TRC Trading, Inc. Are you aware of that  
24 entity?

1 A. Yes.

2 Q. Is that a partnership or S corporation?

3 A. It is an S corporation.

4 Q. And are most of the other entities  
5 partnerships?

6 A. The rest of the entities are  
7 partnerships.

8 Q. Do you know why TRC Trading was formed  
9 as an S corporation?

10 A. Yes. Way back when I joined the CBOE I  
11 incorporated as an S corporation. And that has  
12 been in existence since 19 -- well, I've got it  
13 in my -- I got the file right in my credenza. I  
14 would guess it was formed in 19 -- in the  
15 mid -- call it mid 1970s.

16 Q. Does TRC Trading do anything different  
17 than the partnerships? Is there any other  
18 distinction other than --

19 A. No connection to any of the  
20 partnerships. It was set up then. These  
21 partnerships came long after that. It was  
22 nothing more than to set up an S corporation at  
23 the time I was sole owner. I had a couple of  
24 employees, but I've always owned a hundred

1 percent of it. And it's been in existence as I  
2 say since got to be mid '70s.

3 Q. Do you perform any personal services for  
4 TRC Trading?

5 A. No.

6 Q. Are you aware that TRC Trading was  
7 taking deductions for contributions to your  
8 pension plan?

9 A. Yes. I mean -- yes.

10 Q. Are you aware of an entity called TRC  
11 III Investments, LP?

12 A. Yes.

13 Q. Do you know when that was created?

14 A. No, but I can get that for you.

15 Q. I believe, according to the tax returns,  
16 at least the ones you provided, it was created in  
17 2002 with an Illinois address. Do you know why  
18 that was created with an Illinois address?

19 A. Estate planning.

20 Q. I'm going to show you a  
21 document -- could we put this in the record.  
22 Exhibit A.

23 (WHEREUPON, said document  
24 was marked as Deposition

1 Exhibit A for  
2 Identification.)

3 MR. WYNNE: Just for the record, Exhibit A  
4 is what you have been questioning Mr. Cain about  
5 and is the listing of tax returns that were  
6 provided to you in discovery by Mr. Cain.

7 MR. COVENY: That's correct.

8 BY MR. COVENY:

9 Q. Do you recognize that document?

10 A. I'm not sure I do. When I -- no, I  
11 don't know whether I do or whether I don't. I  
12 don't know whether I've seen that. I might have.  
13 I know that -- obviously I've seen it. I've  
14 signed it.

15 Q. You signed the verification?

16 A. Yeah.

17 Q. For the record, it's your complaint in  
18 the Circuit Court that was filed in protest to  
19 the department's notices.

20 A. Okay.

21 Q. Can you turn to paragraph 38.

22 A. Yes.

23 Q. Could you read that paragraph?

24 A. "Tyler and Talbot purchased property at

1 [REDACTED] Illinois,  
2 in November of 2004 as an investment and is  
3 currently for sale."

4 Q. So would it be fair to say that you  
5 never intended to occupy that property as your  
6 residence or a residence?

7 A. That would not be correct. I purchased  
8 it to build on it. We were going to downsize out  
9 of our house and this -- as this project got  
10 bigger and bigger and more expensive. We  
11 abandoned it, the idea, and stayed in our house.

12 Q. So this statement as an investment --

13 A. Well, as an investment -- yeah, it was  
14 an investment to build on it. But it was -- I  
15 didn't buy it to sell it. I bought it with the  
16 intent that we were going to move out of our  
17 house and build a house. Move into a downsized  
18 house. That did not come about. So we abandoned  
19 plans to build and it has been for sale and now  
20 currently off the market because there have been  
21 zero bids on that house. Or on that property.  
22 Zero.

23 Q. Just to clarify then, the property that  
24 you purchased, and we'll call you it [REDACTED]

1 [REDACTED] lot also, was to  
2 basically replace your current house in Lake  
3 Forest?

4 A. Right. Downsize.

5 Q. And then it was your intent if  
6 you -- let me back up.

7 Was it your intent to sell your  
8 current house?

9 A. Use the proceeds to downsize. That  
10 never even came close.

11 Q. Were you registered to vote in Florida?

12 A. Have been since 1995, I think. I might  
13 even have that. No, I don't have my voter's card  
14 with me.

15 Q. Did you ever vote by absentee ballot?

16 A. Almost always.

17 Q. Were you ever present in Illinois when  
18 you voted?

19 A. I was present in Illinois -- yes, I  
20 would guess I was present in Illinois when I  
21 voted absentee. I wouldn't have been anywhere  
22 else. I could have been. But to answer your  
23 question, yes.

24 Q. Did you ever make a political

1 contribution to a political candidate or office  
2 holder from Florida or who was running for office  
3 in Florida at any level, the local, state or  
4 federal level?

5 A. Yes.

6 Q. Do you recall who?

7 A. Well, you know, everybody's leaning on  
8 me to -- for local candidates for county  
9 commissioners. There are records around  
10 somewhere.

11 Q. I'm going to show you a document that I  
12 believe was prepared or compiled by your  
13 attorney.

14 Before we do that, I'd like to  
15 attach, include in the record Exhibit B, which is  
16 the complaint for declaratory injunctive relief.

17 (WHEREUPON, said document  
18 was marked as Deposition  
19 Exhibit B for  
20 Identification.)

21 THE WITNESS: I mean I don't know. I guess  
22 I'm in here somewhere. This is Ted Ham going  
23 down here.

24 BY MR. COVENY:

1 Q. Is he --

2 A. There's names that I -- a lot of these  
3 names I know, but these are just friends.

4 Q. Well, I had trouble with this document  
5 and I didn't see any candidate who would  
6 have -- that you might have donated to who was  
7 from Florida in this list.

8 A. All right. Well, I can tell you I  
9 have --

10 Q. I wasn't sure how the list is organized.

11 MR. WYNNE: Are you asking for this document  
12 to be explained?

13 MR. COVENY: Partly, yes.

14 THE WITNESS: I can't explain it but I can  
15 tell you who the people are. These are all  
16 neighbors or friends.

17 BY MR. COVENY:

18 Q. What I'm more interested is who the  
19 candidates are, where they're from?

20 A. Well, there was a contribution I gave to  
21 Lee Weber, my local commissioner. Lamar  
22 Alexander.

23 Q. He was running for president, I believe,  
24 right?

1           A.    Yeah.  Local candidates?  Who else?  I  
2 just -- I never really -- no, some guy will put  
3 his arm around me and say send some money.  
4 No -- yes, I have and I can find it.  But all of  
5 these people -- I'm looking at this thing very  
6 quickly on -- these are all friends, neighbors.  
7 There's Janson, Louie Midera, Marge Ordway, Ralph  
8 Glendening lives next-door, Ed Steel.  I don't  
9 know where this comes from.  And I got to be in  
10 there.  If not in this list, in the next list or  
11 the next list or the next list.  Folks down in  
12 Florida, people who have contributed.

13           MR. WYNNE:  This document was provided to  
14 you, but I don't think this represents any  
15 contributions by him.  I think this is  
16 contributions by people in Hobe Sound.

17           THE WITNESS:  I may be in there.

18           MR. WYNNE:  I think there are a couple of  
19 entries where you may, which is maybe the reason  
20 we provided it.

21           BY MR. COVENY:

22           Q.    Let me ask a question.  In several of  
23 the other documents that were in response to the  
24 political contributions, I saw Mark Kirk's name,

1 Andy McKenna's name, they were both candidates  
2 running for office from Illinois.

3 A. Here, yeah.

4 Q. So that was my question, do you recall  
5 giving a donation to any Florida-based  
6 candidates?

7 A. I gave to McKenna. I think I gave him a  
8 couple hundred dollars, \$500. Or Mark Kirk \$500.  
9 I tried to get away from Illinois because I'm  
10 down there, and I don't know who leaned on me,  
11 but Chip Brennan probably.

12 MRS. CAIN: You have friends that work for  
13 them.

14 THE WITNESS: Yeah, that's right.

15 MRS. CAIN: Children. I've given to  
16 Illinois, I've given to Florida, and I've given  
17 to -- well, my greatest contribution is John  
18 Connolly, when he was running for president, he  
19 got one delegate. That worked out well.

20 BY MR. COVENY:

21 Q. Can you tell me what the Tyler R. Cain  
22 Family Foundation is?

23 A. Family foundation that we give -- was  
24 set up -- again I can get you that date, quite

1       awhile ago, to give out money to charities.

2           Q.    Okay.  Do you recall how much was  
3       originally contributed?

4           A.    Yes.  No, I don't.  But I'll tell you,  
5       would you take an approximate number?

6           Q.    Yes.

7           A.    I would guess probably around [REDACTED]  
8       [REDACTED] dollars.  That's an approximate  
9       number.

10          Q.    Do you make annual contributions as  
11       well?

12          A.    Yes.

13          Q.    Do you know if it's considered a  
14       so-called private operating foundation?

15          A.    What's that mean?

16          Q.    It's a term of -- some people feel it's  
17       a term of art, but it's a legal status under the  
18       Internal Revenue code that I believe requires a  
19       certain amount of distributions to be made every  
20       year.

21          A.    Five percent, isn't it?

22          Q.    I believe that's correct.

23          A.    I don't know what it is.  But I give at  
24       least five percent away a year.

1 Q. I think that answers my question. Most  
2 likely in that case it is.

3 Who are the principal beneficiaries  
4 of the donations?

5 A. Well, up until maybe the last ten years  
6 or so would have been Lake Forest Hospital,  
7 Children's Memorial, would be the big  
8 beneficiaries. And now the Jupiter Medical  
9 Center in Jupiter, Florida, would be the -- well,  
10 let me correct that. There's now that I'm on the  
11 board of trustees at Lake Forest College, that is  
12 where I went to school, that is a big  
13 beneficiary. But most of the -- most of the  
14 Illinois-related donees -- for example, I just  
15 wrote out a check for Lake Forest Hospital which  
16 I was on the board for years. I was chairman of  
17 the board. And I wrote out a check for \$300.

18 Q. From the foundation?

19 A. Yeah. In other words, annual giving I  
20 gave \$300. To try and put it in perspective.  
21 I'm shifting money that was given here over the  
22 years down to Florida.

23 Q. How does that amount compare to what you  
24 gave to the Jupiter Medical Center, do you know?

1           A. I've got a pledge of [REDACTED] to the  
2 Jupiter Medical Center outstanding. I gave them  
3 about five or six years ago [REDACTED] to the  
4 Jupiter Medical Clinic, which is a small  
5 two-doctor operation which I'm on the board of  
6 also.

7                       I'm on the board of Jupiter Medical  
8 Foundation which is the money raising arm of the  
9 Jupiter Hospital. I'm on that board and I give  
10 -- and to put it, it's two doctors, two nurses, a  
11 receptionist, but it's right there serving a  
12 small group of people and I give that [REDACTED].

13           Q. Okay. Again, from the foundation?

14           A. Again, from the foundation.

15           Q. If I can show you this statement, or  
16 document, excuse me.

17           A. Yeah, that is a wedding. This thing  
18 with the brackets around it --

19           Q. Well, actually you do recognize the  
20 document?

21           A. Yeah, I know, I got this.

22           Q. If you can turn to the very last page  
23 which I think actually is a different document.  
24 I stapled it together.

1 A. Yeah, it is. Last page?

2 Q. Yes.

3 A. Okay.

4 Q. And this one, the document that appears  
5 to be a list of your clubs in Illinois and  
6 Florida as well as outside.

7 A. Correct.

8 Q. I have only one specific question, and  
9 that is on the list of Illinois clubs, which was  
10 specifically The Shore Acres for the year 2005  
11 you were showing almost [REDACTED] in fees or dues,  
12 correct?

13 Again, this is from the last page,  
14 which is the -- the summary page.

15 A. Okay.

16 Q. But the invoice, the first three pages  
17 show a balance of -- like a current balance, and  
18 this invoice is dated 6/30/05 of [REDACTED].

19 A. Correct. That's a wedding that we  
20 sponsored and I was reimbursed. So I'm comparing  
21 apples and apples. That would be apples and  
22 oranges, because that [REDACTED] and  
23 [REDACTED] was a wedding we did for Ron and  
24 Randy. No, it was the Grays.

1 MRS. CAIN: I don't know.

2 THE WITNESS: They weren't members. They  
3 had a daughter that -- the son, they live in  
4 Greenwich. Friends of ours came out here and  
5 needed a place to have their reception after the  
6 wedding, and we -- that's that number here.

7 So it shows a spike up and is  
8 inconsistent with the back page, but I back that  
9 out because it was a...

10 BY MR. COVENY:

11 Q. So the \$ [REDACTED] figure --

12 A. The [REDACTED] and [REDACTED] are all  
13 connected to that wedding.

14 So if you back that out it will  
15 come up with this number on the back page.

16 Q. You didn't really spend --

17 A. No, I didn't. I turned -- they charged  
18 me. I gave them the bill and they gave me the  
19 money.

20 Q. That's fair enough.

21 MR. WYNNE: Are you marking these exhibits?

22 MR. COVENY: Yes, we can mark that Exhibit

23 C.

24 (WHEREUPON, said document



1 took the day coming back off. But I didn't go.  
2 I left on Sunday and I was in Florida starting  
3 Monday. I would have taken the date, date that I  
4 left, and I think I would -- when I came back  
5 let's say I left in October which was our pattern  
6 for the past ten years, leave towards the end of  
7 October and come back around the 10th of  
8 December, stay until the 26th or 27th, and then  
9 go back down until May. And I --

10 Q. So you tried to account for double  
11 counting or whatever?

12 A. I know I thought about it. I know I  
13 thought about it. So I would guess that I  
14 dropped -- included one day, dropped one day. So  
15 maybe those are --

16 Q. Okay. What I was asking, because some  
17 people will count the day they would leave from  
18 Florida to Illinois a day each.

19 A. Yeah, I think I cut it in half.

20 Q. Okay. With respect to your Lake Forest  
21 house --

22 MR. WYNNE: Marking this?

23 MR. COVENY: Yes. Sorry. Thank you.

24 This is Exhibit D and it's a list

1 of days in each state.

2 (WHEREUPON, said document  
3 was marked as Deposition  
4 Exhibit D for  
5 Identification.)

6 BY MR. COVENY:

7 Q. With respect to the Lake Forest house,  
8 did you claim the homestead exemption on your  
9 real estate taxes do you know?

10 A. I'm going to have to defer to Mike on  
11 that.

12 MR. WYNNE: We provided you with a response  
13 in interrogatories I believe to that.

14 MR. COVENY: Okay.

15 BY MR. COVENY:

16 Q. Do you recall where the real estate tax  
17 bill for your Florida house is sent?

18 A. Yeah, must be sent to my house -- yeah,  
19 sent to my house in Florida.

20 MR. COVENY: Can we take a break for a  
21 second?

22 MR. WYNNE: Sure.

23 (Recess.)

24 BY MR. COVENY:

1 Q. Mr. Cain, I'm going to show you a  
2 document there.

3 A. Yes.

4 Q. Have you seen that before?

5 A. I have seen this before, but my wife  
6 goes to these meetings and I get copied on them.  
7 I was present at this one, I guess. I don't  
8 know. Very rarely am I present at these  
9 meetings. This is all my wife going over and  
10 meeting with the contractor, the foreman, and  
11 just going over weekly stuff to do at the house,  
12 you know, to stay on top of it all. I have been  
13 to a couple of these meetings. Talbot goes to  
14 95 percent of them.

15 Q. Can you look at paragraph -- or number  
16 six.

17 A. That is not there, because no tub. No  
18 tub.

19 Q. Was that intended to refer to your wife  
20 Talbot, her?

21 A. Can she answer the question?

22 MR. WYNNE: The document you are referring  
23 to is a description of work of the meeting  
24 minutes and paragraph six refers to putting a tub

1 in her bathroom?

2 MR. COVENY: Right.

3 MR. WYNNE: Would that be reference to  
4 Talbot's bathroom?

5 THE WITNESS: Yes.

6 MR. COVENY: This is Exhibit E, it's meeting  
7 minutes.

8 (WHEREUPON, said document  
9 was marked as Deposition  
10 Exhibit E for  
11 Identification.)

12 BY MR. COVENY:

13 Q. You said earlier that you wanted to  
14 downsize. Was the square footage of the house  
15 that was never built, that was going to be  
16 smaller than your current house?

17 A. It was the way -- in the beginning  
18 stages, that was the idea.

19 Q. Why ultimately was the house --

20 A. Too expensive.

21 MR. WYNNE: Let him finish the question.

22 MR. COVENY: He answered it. I was going to  
23 ask why it wasn't ultimately built.

24 BY MR. COVENY:

1 Q. And that's the case even with smaller  
2 square feet, fewer square feet?

3 A. Just too expensive. It wasn't  
4 accomplishing the purpose of downsizing.  
5 Expense, living, overhead.

6 MR. WYNNE: In regards to your last  
7 question, when you said current house, were you  
8 referring to the Lake Forest house?

9 MR. COVENY: Yes. Yes, I was.

10 THE WITNESS: Yeah, you're referring to the  
11 property on Green Bay Road where we were going to  
12 build.

13 MR. COVENY: Right. I have nothing else.

14 MR. WYNNE: Do you mind if I ask a couple of  
15 questions?

16 MR. COVENY: No.

17 EXAMINATION

18 BY MR. WYNNE:

19 Q. Mr. Coveny asked you about TRC creating  
20 a deduction for a pension plan. Do you recall  
21 that question?

22 A. I recall it, yes.

23 Q. Did you prepare the tax returns for the  
24 entities?

1 A. No, no.

2 Q. Were the returns explained to you by  
3 whoever prepared them?

4 A. No.

5 Q. Who prepared the returns over the period  
6 from 1994 through 2004, who prepared the returns  
7 for you?

8 A. Bob Jacobson has for several years and  
9 then another accountant did before that, and  
10 I -- he retired. And so I was introduced to Bob  
11 Jacobson.

12 Q. Do you recall since Bob Jacobson took  
13 over the preparation whether the pension  
14 deduction has been taken?

15 A. I don't -- you're asking me --

16 Q. If you don't recall that's fine.

17 A. I don't recall, no.

18 Q. In the later returns where Bob Jacobson  
19 prepared them, the deduction was not taken. Do  
20 you recall if that was your decision or his?

21 A. It would be his decision.

22 MR. WYNNE: Take a look at that.

23 MR. COVENY: Is this when they purchased it?

24 MR. WYNNE: Yes, this is from the documents

1 you provided to us.

2 MR. COVENY: Okay.

3 BY MR. WYNNE:

4 Q. Handing you a two-page document, can you  
5 examine it and tell me what you understand it to  
6 be?

7 A. Illinois Real Estate Transfer  
8 Declaration.

9 Q. For which properties is it for?

10 A. The property is at [REDACTED]  
11 [REDACTED]

12 Q. Is that the property that we've been  
13 referring to in Mr. Coveny's examination as  
14 having plans for a downsized house?

15 A. That's correct.

16 Q. Would you look at line six of the first  
17 page and tell me what that says.

18 A. Line six, yes or no, will the property  
19 be the buyer's principal residence?

20 Q. How is that answered on the page?

21 A. It's answered no.

22 Q. On page two, does it show you as the  
23 buyer?

24 A. It shows me as the buyer. I believe

1 that's what that says, buyer information, right?

2 Q. There's a line that says buyer or agent  
3 signature. Do you recognize that signature?

4 A. Harris?

5 Q. Is that what you recognize it to be?

6 A. I don't know.

7 Q. It's under your name for buyer  
8 information.

9 A. Buyer information Tyler R. Cain.

10 Q. Would the representation on line six if  
11 that was not your principal residence be correct?

12 A. It wasn't. It's a vacant lot.

13 MR. COVENY: Please mark this as Deponent  
14 Exhibit F.

15 (WHEREUPON, said document  
16 was marked as Deponent  
17 Deposition Exhibit F for  
18 Identification.)

19 MR. WYNNE: That's all.

20 MR. COVENY: That's it.

21 AND FURTHER DEPONENT SAYETH NAUGHT  
22  
23  
24

1 STATE OF ILLINOIS )  
 ) SS:  
2 COUNTY OF C O O K )

3 I, MAUREEN A. WOODMAN, Certified Shorthand  
4 Reporter and Notary Public in and for the County  
5 of Cook and State of Illinois, do hereby certify  
6 that TYLER CAIN was first duly sworn to testify  
7 the whole truth and that the above deposition was  
8 recorded stenographically by me, and was reduced  
9 to typewriting under my personal direction.

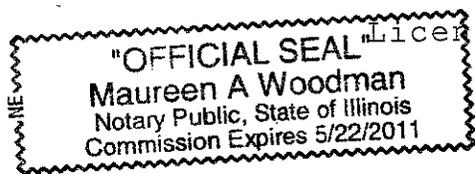
10 I further certify that the said deposition  
11 was taken at the time and place specified.

12 I further certify that I am not a relative  
13 nor employee or attorney nor counsel of any of  
14 the parties, nor a relative or employee of such  
15 attorney nor counsel nor financially interested  
16 directly nor indirectly in this action.

17 In witness whereof, I have hereunto set my  
18 hand and affixed my seal of office at Chicago,  
19 Illinois, this 2nd day of February  
20 A.D., 2009

*Maureen A. Woodman*  
\_\_\_\_\_

22 MAUREEN A. WOODMAN, C.S.R.



23 License No. 084-002740

24

# EXHIBITS

**CAIN, TYLER & TALBOT / ILLINOIS TAX LITIGATION**

<u>YEAR</u>	<u>TAXPAYER</u>	<u>TYPE OF RETURN</u>
1996	Tyler & Gertrude Cain	Florida Individual and Joint Intangible Tax Return for Individual and Joint Filers as of January 1, 1996
1997	Tyler & Gertrude Cain	Florida Individual and Joint Intangible Tax Return for Individual and Joint Filers as of January 1, 1997
1998	Tyler & Gertrude Cain	Florida Individual and Joint Intangible Tax Return for Individual and Joint Filers as of January 1, 1998
2004	Rolly Investments, L.P.	1065 U.S. Return of Partnership Income
1998	TRC Investments, LLC	1065 Initial Return - U.S. Return of Partnership Income
1999	TRC Investments, LLC	1065 U.S. Return of Partnership Income
1999	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2000	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2000	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2001	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2001	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2002	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2002	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2003	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2003	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2004	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2004	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income



<u>YEAR</u>	<u>TAXPAYER</u>	<u>TYPE OF RETURN</u>
2002	TDC Investments, L.P.	1065 U.S. Return of Partnership Income
2003	TDC Investments, L.P.	1065 U.S. Return of Partnership Income
2004	TDC Investments, L.P.	1065 U.S. Return of Partnership Income
1996	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
1997	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
1998	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
1999	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
2000	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
2001	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
2002	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
2003	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
2004	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
2004	TRC Trading Inc.	IL-1120-ST Small Business Corporation Tax Return
1995	TRC I Investments L.P.	1065 - Short Year Initial Return - U.S. Return of Partnership Income
1995	TRC I Investments L.P.	IL-1065 Illinois Partnership Return of Income
1996	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
1997	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
1998	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
1999	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
2000	TRC I Investments L.P.	1065 U.S. Return of Partnership Income

<u>YEAR</u>	<u>TAXPAYER</u>	<u>TYPE OF RETURN</u>
2001	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
2002	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
2003	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
2004	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
1995	TRC II Investments, L.P.	1065 - Short Year Initial Return - U.S. Return of Partnership Income
1995	TRC II Investments, L.P.	IL-1065 Illinois Partnership Return of Income
1996	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
1997	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
1998	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
1999	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2000	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2001	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2002	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2003	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2004	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2002	TRC III Investments, L.P.	1065 U.S. Return of Partnership Income
2003	TRC III Investments, L.P.	1065 U.S. Return of Partnership Income
2004	TRC III Investments, L.P.	1065 U.S. Return of Partnership Income

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT -- LAW DIVISION  
TAX & MISCELLANEOUS REMEDIES SECTION

TYLER R. CAIN and TALBOT D. CAIN,

Plaintiffs,

v.

BRIAN HAMER, in his official capacity as  
DIRECTOR, ILLINOIS DEPARTMENT OF  
REVENUE; THE ILLINOIS DEPARTMENT  
OF REVENUE; and JUDITH BAAR TOPINKA,  
in her official capacity as STATE TREASURER  
of the State of Illinois,

Defendants.

No.

200610050986  
CALENDAR/ROOM  
TIME 00:00  
TAX

DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

2006 OCT -6 PM 2:44

FILED-12

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The Plaintiffs, TYLER R. CAIN and TALBOT D. CAIN (the "Cains" or, singly, "Tyler" and "Talbot"), individuals, by and through their attorneys, SONNENSCHN NATH & ROSENTHAL LLP, complain of the Defendants, The Illinois Department of Revenue (the "IDOR" or the "Department"), Brian Hamer, as Director of the IDOR (the "Director"), and Judith Baar Topinka, as State Treasurer (the "Treasurer", and collectively all as the "State Defendants" or the "State"), as set forth below.

**PRELIMINARY STATEMENT**

At issue here is whether senior citizens who actually, demonstrably, and in earnest abandon Illinois as their permanent residence and domicile and acquire a new domicile in another state for their next stage in life must, to satisfy the Department that they are not a resident for purposes of the Illinois Income Tax Act (the "ITA"), also surrender all remaining emotional and lesser ties with Illinois that add enjoyment and simplicity to their lives.

EXHIBIT

B

Sixteen years after Tyler and Talbot Cain left Illinois to establish residence in Florida, and eleven years after they formally and legally declared Florida to be their permanent residence and domicile, the State seeks to collect nine years of IITA liability against the Cains, as "residents" of Illinois. In addition, the State seeks to collect double the penalties and double the interest that would otherwise apply to an income tax deficiency, for Tyler's and Talbot's failure to perjure themselves by filing an Illinois income tax return declaring themselves to be residents of Illinois for each of those years.

The issue is whether the IITA term "nonresident" now means a person who severs all ties with Illinois, or whether it still means a person that has acquired a domicile in another state.

#### JURISDICTION AND VENUE

1. Plaintiffs bring this action pursuant to the State Officers and Employees Money Disposition Act, 30 ILCS 230/1 *et seq.* ("Protest Monies Act"), invoking the jurisdiction of this Court to enjoin the imposition of taxes that are unauthorized by law.
2. Plaintiff seeks, among other things, to enjoin the Defendants from transferring to the State Treasury the sum of \$1,842,582.00 (One Million, Eight-Hundred and Forty-two Thousand, Five-Hundred and Eighty-two Dollars, and no cents), which Plaintiff paid under protest on October 4, 2006, as personal income taxes, penalties, and interest claimed due by the IDOR for the tax years ending:
  - a) December 31, 1996
  - b) December 31, 1997
  - c) December 31, 1998
  - d) December 31, 1999

- e) December 31, 2000
- f) December 31, 2001
- g) December 31, 2002
- h) December 31, 2003
- i) December 31, 2004.

- 3. This Court has jurisdiction over this matter pursuant to Section 2a of the Protest Monies Act.
- 4. Venue is proper in the Circuit Court of Cook County because the Defendants have offices there.

**Facts Common To All Counts**

- 5. Forty-one years ago, the newly wed Tyler and Talbot Cain spent their honeymoon in Jupiter Island, in Martin County, Florida, and then returned to Illinois to begin their married life.
- 6. It is, and was since at least 1990, Tyler and Talbot's wish to live the remainder of their lives in Martin County, Florida. They have purchased there two side-by-side burial plots where they will be laid to rest upon their death, further assuring they will never return to Illinois for any temporary, transitory or other purpose whatsoever. Florida will by then have served to celebrate the beginning of their married life, as their home and domicile since 1990, and as their final resting place.
- 7. In March 17, 1987, Tyler and Talbot purchased vacant land, at what is now [REDACTED] [REDACTED] in Martin County, Florida, just a few miles south of where they honeymooned on Jupiter Island in 1965.

8. Until 1990, Tyler and Talbot made their family home and raised their children at [REDACTED] Illinois, a home they purchased in 1978. The home is a three-bedroom house on two acres of land.
9. Tyler, who was self-employed since 1978, held a membership seat in the Chicago Board of Options Exchange until 1990. Tyler incorporated TRC Trading, Inc., on April 10, 1985, initially, to hold his interest in the Chicago Board of Options Exchange. TRC Trading, Inc. has since 1986 shared office space with an unrelated entity, mostly to retain documents and receive mail, at 3 Market Square Court, Lake Forest, Illinois.
10. By 1990, Tyler and Talbot's children were fully grown and no longer lived in Illinois.
11. In 1990 Tyler sold his membership seat on the Chicago Options Exchange, freeing him and Talbot to pursue their future life in Florida. Since that time, TRC Trading, Inc. has merely held certain investments, and it remains in good standing with the Illinois Secretary of State.
12. On or before 1987, Talbot had drawn rough sketches of a home they would build at the Hobe Sound property in Florida. By 1990, Construction notes and mortgage arrangements were made through the Barnett Bank of Martin County, Florida, and the Northern Trust Bank / Lake Forest, N.A.
13. By the time in 1990 that Tyler sold his membership seat on the Chicago Options Exchange, the home at [REDACTED] Florida, was complete and ready for Talbot and Tyler to move in. The home is a four-bedroom house on four acres of land, with a detached two-bedroom guest-house, and a detached office building for Tyler's use.

14. Five years after moving to Florida, Tyler and Talbot took formal steps to memorialize what had been their long-held intent and had indeed become a fact, and they executed a Florida Declaration of Domicile, which was recorded in the Official Records of Martin County, effective June 20, 1995. A copy of the Declaration of Domicile is attached hereto as Exhibit A.
15. The Declaration of Domicile was a legal formality, as in fact Tyler and Talbot had through other actions made clear that Florida was the state of their legal residence and domicile, and that they did not intend to return to Illinois for other than temporary or transitory purposes.

FLORIDA

16. Tyler and Talbot are each registered to vote in Florida and have voted in Florida in all national elections since 1996.
17. Tyler and Talbot have been called to serve, and have served, jury duty in Florida.
18. Tyler and Talbot own three vehicles, but have owned more in the past relevant years, all of which are and have been registered in Florida.
19. Tyler and Talbot have at all relevant times had Florida issued drivers licenses.
20. The Cains' federal tax returns have all borne their Florida home address since 1995.
21. Tyler and Talbot directly or indirectly own the following real estate in Florida:
- (A) [REDACTED] since 1987.
  - (B) [REDACTED] since 2003. This is a three-bedroom townhouse.

(C) 0 SE Dixie Highway Olympia, Plat 1 Lots 330, 331, 332, 333, and 334, Block 16.

This is vacant land.

22. Talbot is an officer / director in PMS Properties, Inc., a Florida corporation with offices in Milwaukee, Wisconsin, which has purchased property in Florida.

23. Tyler and Talbot have memberships in the following Florida organizations:

(A) Everglades Club, Palm Beach, FL, since 1996.

(B) Hobe Sound Yacht Club, FL, since 1994. Talbot is a Director of the Club.

(C) Jupiter Island Club, FL, since before 1996. Tyler served on the Board of Directors for nine years, and on the Buyout Committee for three years.

(D) Seminole Golf Club, FL, since 1989.

24. Tyler and Talbot subscribe to the following publications delivered to them in Florida:

(A) Palm Beach Post

(B) New York Times

(C) Investors Business Daily

(D) Wall Street Journal.

25. Tyler's cellular telephone has a Florida area code (No. 772).

26. Tyler and Talbot have established patient relationships with the following Florida medical providers:

- (A) Dr. Mark Groeke, Internist, for the past three years.
  - (B) Dr. Peter Lascheid, Dentist, for the past ten or more years.
  - (C) Dr. Warren Zwecker, Dermatologist, for the past ten or more years.
  - (D) Dr. Elise Hillman, Dermatologist, for the past ten or more years.
27. Tyler and Talbot have for the past 16 years, spent approximately 6 or more months in Florida each year, with the remainder of the year split between Illinois, Ohio and various vacation destinations throughout the world.
28. During their absences from Florida, Tyler and Talbot's home is not rented.
29. At all relevant times, Tyler and Talbot have filed U.S. federal personal income tax returns bearing the address of their Florida residence.
30. Tyler and Talbot have made contributions and donations to Florida charitable organizations. Tyler has a [REDACTED] outstanding pledge for renovation of the Jupiter Hospital Emergency Room. Tyler is also a member of the Jupiter Hospital Foundation.
31. At all relevant times, Tyler and Talbot have had a banking relationship with the Northern Trust Bank, which has a facilities they use in Palm Beach, Florida.
32. At all relevant times, Tyler and Talbot have employed the services of legal advisors in Florida.
33. Tyler's and Talbot's estate plans rely upon a Florida attorney, Robert Chapin, for administration and implementation.

34. Estate planning documents for Tyler and Talbot make reference to them as Florida residents.

ILLINOIS

35. The last Illinois income tax return filed by Tyler and Talbot was in 1995, and it was filed as a nonresident.

36. Although Tyler and Talbot are now long-established residents of Florida, throughout their long period of former residency in Illinois they accrued certain connections which they have retained.

37. One particularly heartfelt connection for Talbot is their former residence at [REDACTED] [REDACTED] Talbot's childhood, as the daughter of a man who eventually became the Chairman of AT&T, was itinerant, as the career obligations of her father required her frequent uprooting throughout most of her youth. Talbot's longing for a place to settle down and call her own was fulfilled by the residence in Lake Forest, Illinois. It was within Tyler's means to build their new home and life in Florida without having to dispose of a home so dear to Talbot, and so they retain the property to this day, and intend to retain it for the indefinite future.

38. Tyler and Talbot purchased property at [REDACTED] Illinois, in November of 2004, as an investment, and it is currently for sale.

39. TRC Trading, Inc., wholly owned by Tyler, shares the rent at [REDACTED] [REDACTED], paying one-third of the rent, as it has since June 1986, as an arrangement for managing Tyler's mail and other conveniences while temporarily in Illinois.

40. Shortly after moving to Florida, having changed the contact and mailing information to Florida for significant banking, business and consumer relationships, Tyler discovered that bills and other time-sensitive documents were arriving late or not at all, due to notoriously poor U.S. Postal Service operations in coastal Florida. Consequently, Tyler arranged for the delivery of mail to the address at 3 Market Square Court, Lake Forest, where TRC Trading Inc. already maintained its office. A secretary at the shared office e-mails Tyler any important information, and sends the rest of the mail, including any mail that has been delivered to the 51 North Green Bay Road address, via UPS to the Hobe Sound, Florida address.

41. Although in 1990 both of the Cain children lived outside Illinois, one of their daughters later returned to Illinois and now lives in Illinois with her family. The Lake Forest home is now also a convenient place for Tyler and Talbot to stay while visiting their daughter and grandchildren. The Cains also have grandchildren through their daughter who lives in Ohio.

42. Although Tyler and Talbot have memberships at three golf clubs and the Hobe Sound Yacht Club in Florida, as well as memberships in two golf clubs in New York and Pennsylvania, respectively, they retain the memberships they had in Illinois at the time they moved to Florida, as follows:

- (A) Old Elm Club, Highwood.
- (B) Onwentsia Club, Lake Forest.
- (C) Shoreacres Club, Lake Bluff.

- (D) Racquet Club of Chicago, Chicago.
43. Tyler and Talbot have retained the patient relationships they had in Illinois with the following medical practitioners:
- (A) Dr. Jerry Osher, Internist.
  - (B) Dr. Lloyd Sigmund, Dentist.
  - (C) Dr. Julia Marshall, Dermatologist.
44. Because Tyler had been self-employed for most of his adult life, his and Talbot's retirement income derives from investments in securities, bonds and real estate, held directly or through passive limited partnerships, and not from an employer's pension, profit sharing plan, or 401(k) plan.
45. Tyler, Talbot, and their daughters have direct or indirect ownership interests in the following entities:
- (A) TRC I Investments, L.P.
  - (B) TRC II Investments, L.P.
  - (C) TRC III Investments, L.P.
  - (D) TRC Investments, LLC
  - (E) TRC Investments, L.P.

Each these entities is organized in Delaware. The entities were formed to organize and manage the family's financial investments. None of these entities is engaged in an active trade or business, and none of these entities renders any service of any kind to anyone.

46. Under the IITA Section 205(b) the partnerships in which Tyler has interests in are exempt from the Illinois Personal Property Replacement Income Tax imposed by Section 201(c) and (d) of the IITA, because they are classified as an "investment partnership" under Section 1501(a)(11.5) of the IITA. 35 ILCS 5/205(b); 35 ILCS 5/1501(a)(11.5).
47. According to the K-1 Forms issued to partners, Tyler and Talbot have not had income from Illinois sources and hence have not had taxable income to report to Illinois as a nonresident. Tyler has filed income tax returns and paid taxes in states where the K-1 Forms that Tyler receives have indicated the partnership received income from sources within such states in a given tax year.

#### THE CONTROVERSY

48. The Department advised Tyler and Talbot that some of the legal entities in which they own an interest had Illinois addresses, and therefore that, notwithstanding the extensive Florida contacts Tyler and Talbot disclosed to the Department, the Department considered them to be residents of Illinois from 1996 through 2004.
49. Tyler and Talbot left Illinois in 1990, and acquired a domicile in Florida which they maintain to this day. By their actions since 1990, they have evidenced a constant and abiding intent never to return to Illinois for other than temporary or transitory purposes, and therefore they are not residents of Illinois for purposes of the IITA.
50. On August 18, 2006, the Department issued a Notice of Deficiency to Tyler and Talbot, for the tax years 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004, claiming individual income taxes, plus penalties and interest due in the total amount of \$1,842,582.00. The penalties and interest for tax years ending prior to July 1, 2002, were

doubled pursuant to the Tax Delinquency Amnesty Act. 35 ILCS 745/1 et seq., (P.A. 93-26 -- S.B. 696).

COUNT I

51. Plaintiffs reallege, restate and incorporate paragraphs 1 through 50 of this Complaint as if fully set forth herein.
52. The IITA imposes a tax measured by net income on every individual for "the privilege of earning or receiving income *in*" Illinois "*or as a resident*" of Illinois. 35 ILCS 5/201(a).
53. IITA Section 1501(a)(20), in pertinent part, provides:
- (20) Resident. The term "resident" means:
- an individual (i) who is in this state for other than a temporary or a transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year.
- 35 ILCS 5/1501(a)(20).
54. IITA Section 1501(a)(14) provides:
- Nonresident. The term "nonresident" means a person who is not a resident.
- 35 ILCS 5/1501(a)(14).
55. A resident is taxed on 100% of his or her income. A nonresident is taxed only on that portion of his or her income that is derived from Illinois sources or activities.
56. Tyler and Talbot have in each taxable year at issue been in Illinois solely for a temporary purpose during the taxable year, and therefore neither one of them has been an Illinois resident for purposes of the IITA.

57. Tyler and Talbot have been resident and domiciled in Florida since 1990, and legally declared their domicile in Florida since at least 1995, and therefore neither one of them has been an Illinois resident for purposes of the IITA.
58. The IDOR regulations provide that "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." 86 Ill. Admin. Code. §100.3020(f). Tyler and Talbot have, during each of the relevant tax years, spent less than nine months in Illinois and cannot be presumed to be residents of Illinois.
59. The IDOR regulations provide the following example:
- (A) Example 1. X is domiciled in Fairbanks, Alaska, where he had lived for 50 years and had accumulated a large fortune. For medical reasons, X moves to Illinois, where he now spends his entire time, except for yearly summer trips of about three or four months duration to Fairbanks. X maintains an abode in Illinois and still maintains, and occupies on visits there, his old abode in Fairbanks. Notwithstanding his abode in Fairbanks, because his yearly sojourn in Illinois is not temporary or transitory, he is a resident of Illinois and is taxable on his entire net income.
- (B) AGENCY NOTE: *If in the foregoing example the facts are reversed, so that Illinois is the State of original domicile and Alaska is the state in which the person is present for the indicated periods and purposes, X is not a resident of Illinois within the meaning of the law, because he is absent from Illinois for other than temporary or transitory purposes.*
- 86 Ill. Admin. Code § 100.3020 (c)(1) (italics added). Pursuant to the Agency Note in the IDOR regulations, Tyler and Talbot should not be considered Illinois residents.
60. The IDOR regulations provide another example, as follows:

- (A) Example 3. B and C, husband and wife, domiciled in Minnesota where they maintain their family home, come to Illinois each November and stay here until the middle of March. Originally they rented an apartment or house for the duration of their stay, but three years ago they purchased a house here. The house is either rented or put in the charge of a caretaker from March to November. B has retired from active control of his Minnesota business but still keeps office space and nominal authority in it. He belongs to clubs in Minnesota, but to none in Illinois. He has no business interests in Illinois. C has little social life in Illinois, more in Minnesota, and has no relatives in Illinois. Neither B nor C is a resident of Illinois. The connection of each to Minnesota, the state of domicile, in each year is closer than it is to Illinois. Their presence here is for temporary or transitory purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Illinois is the State of domicile and B and C are visitors to Minnesota, B and C are residents of Illinois.

86 Ill. Admin. Code § 100.3020 (c)(3). Pursuant to the Agency Note in the IDOR regulations, Tyler and Talbot should not be considered Illinois residents.

WHEREFORE, Plaintiffs respectfully request this Court to enter a judgment in their favor and against the Defendants and declare that:

- a) for each tax year included in the Notice of Deficiency Tyler Cain and Talbot Cain were domiciled in Florida and were not a "resident" of Illinois for purposes of Section 1501(a)(20) of the IITA;
- b) for each tax year included in the Notice of Deficiency Tyler Cain and Talbot Cain were each a "nonresident" of Illinois for purposes of Section 1501(a)(14) of the IITA;
- c) for each tax year included in the Notice of Deficiency, the Department's application of Section 1501(a)(20) of the IITA and of Section 100.3020 of the IDOR regulations to treat Tyler Cain and Talbot Cain as Illinois residents is erroneous and invalid;

- d) for each tax year included in the Notice of Deficiency, the Department's determination that Tyler Cain and Talbot Cain are "residents" of Illinois is directly contrary to Section 100.3020 of the Department's regulations and therefore the Notice of Deficiency was arbitrarily and capriciously issued in violation of the Department's regulation.
- e) in accordance with 30 ILCS 230/2a, that Defendant Topinka shall refund Plaintiffs' protest payment with interest as provided by law; and,
- f) that Plaintiff is entitled to whatever other relief this Court deems appropriate.

COUNT II

61. Plaintiffs reallege, restate, and incorporate paragraphs 1 through 60 of this Complaint as if fully set forth herein.

62. The United States Constitution provides:

[N]or shall any State deprive a person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

63. The Illinois Constitution provides as follows:

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

Ill. Const. 1970, art I, § 2.

64. The Illinois Constitution also provides as follows:

In any law classifying the subject or object of non-property taxes or fees, the classes shall be reasonable and the subjects or objects within each class shall be taxed uniformly.

Ill. Const. 1970 art. IX, § 2.

65. Legal entities that earn or receive income from investments may derive income from within a State without having an address within the State, and legal entities having an address within a State may derive investment income which has no connection with the state in which the legal entity has its address.
66. Illinois has singled out for treatment as a "resident" those individuals resident and domiciled outside Illinois who own interests in legal entities with Illinois addresses when there is no real and substantial difference, that is reasonably related to a purpose furthered by the IITA, between individuals resident and domiciled outside Illinois who own interests in legal entities with Illinois addresses and similarly situated individuals who own interests in legal entities with addresses in other States.
67. There is no rational basis, bearing a reasonable relation to a legitimate State interest, to declare as a "resident" under the IITA an individual resident and domiciled outside of Illinois by reference solely to the Illinois address of the legal entity in which the individual owns and interest.

WHEREFORE, Plaintiffs respectfully request this Court to enter a judgment in their favor and against the Defendants and declare that the Department's application of Section 1501(a)(20) to Tyler and Talbot Cain, that gives controlling weight to the Illinois address of legal entities in which the Plaintiffs hold ownership interests, is unconstitutional in that it :

- a) discriminates against Plaintiffs relative to other similarly situated persons resident and domiciled outside Illinois but who are in Illinois for temporary or transitory purpose, and thus deprives them of the equal protection of the laws in violation of the Equal Protection Clause of the United States Constitution and of the Illinois Constitution;

- b) excludes from the nonresident class those persons resident and domiciled in another state who own interests in legal entities with Illinois addresses and are in Illinois for temporary or transitory purposes, and includes within the resident class persons who are resident and domiciled outside Illinois and who would otherwise be nonresident but for their ownership interests in legal entities with Illinois addresses, in violation of the Uniformity Clause of the Illinois Constitution.
- c) arbitrarily and capriciously turns the determination of residency among similarly situated persons resident and domiciled in another state solely on whether such persons own a legal interests in an entity with an Illinois address, in violation of the Due Process Clause of the United States Constitution and of the Illinois Constitution.
- d) in accordance with 30 ILCS 230/2a, that Defendant Topinka shall refund Plaintiffs' protest payment with interest as provided by law; and,
- e) that Plaintiff is entitled to whatever other relief this Court deems appropriate.

### COUNT III

#### PROTEST MONIES ACT INJUNCTION

68. Plaintiffs reallege, restate, and incorporate paragraphs 1 through 67 of this Complaint as if fully set forth herein.

69. On August 18, 2006, the Department issued a Notice of Deficiency to Tyler and Talbot, for the tax years 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004, claiming individual income taxes, plus penalties and interest due in the total amount of \$1,842,582.00.
70. On October 4, 2006, Plaintiff paid the amount shown due in the Notice of Deficiency, \$1,842,582.00, under protest. Copies of the Notice of Deficiency, the Notice of Payment Under Protest, and the payment are attached and marked Exhibit B.
71. All officers and agencies of the Executive Department of state government are subject to the Protest Monies Act.
72. Every officer and employee subject to the Protest Monies Act must notify the State Treasurer of protest payments, which the State Treasurer is to deposit in a special fund known as the "Protest Fund." 30 ILCS 230/2a.
73. Section 2a of the Protest Monies Act provides that a party making a protest payment as provided in Section 2a.1 of the Protest Monies Act must secure a preliminary injunction or a temporary restraining order within 30 days of its protest payment, which enjoins the transfer of the protest payment from the Protest Fund to the appropriate fund in which such payment would have been placed if the payment had been made without protest.
74. Plaintiff is without an adequate remedy at law. Failure to enter an injunction within the 30 day period specified in the Protest Monies Act will cause the payment Plaintiff made under protest to be transferred to the General Fund.

75. Plaintiff will suffer irreparable harm to its ability to gain a speedy, efficient, and impartial *de novo* hearing before a Circuit Court, and to its ability to obtain a refund of its protest payment, unless this Court timely enters an Order preliminarily enjoining the transfer of Plaintiff's protest payment from the Protest Fund to any other fund in the State Treasury until the final Order or judgment of this Court.
76. An actual controversy exists between Plaintiff and the Department over the proper disposition of the monies Plaintiff paid to the Department under protest.
77. Having timely filed this Complaint with the Court and having timely sought a preliminary injunction, notice having been served on the Department and the Illinois Attorney General, Plaintiffs have a reasonable likelihood of success on the merits of their claim for relief under the Protest Monies Act.
78. Because the amount claimed due from Plaintiffs in the Notice of Deficiency has been paid under protest and is now in Defendant's custody and control, there is no reason for requiring Plaintiffs to post any bond on the issuance of a temporary or preliminary injunction.

**WHEREFORE**, Plaintiffs respectfully request this Court to enter judgment in its favor and against Defendants and to award Plaintiffs the following relief:

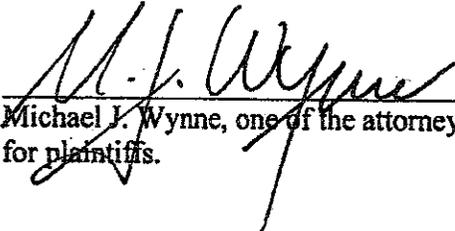
- a. A preliminary injunction without bond restraining the transfer of Plaintiff's protest payment from the Protest Fund to the General Fund or to any other fund;  
and

- b. An injunction restraining the Department from taking or causing another to take any action to assess, enforce, offset against credits or overpayments for any tax years, or otherwise collect the liability proposed by the Notice of Deficiency and paid under protest by the Plaintiffs until a final order or judgment of this Court.

Respectfully submitted,

TYLER R. CAIN, AND TALBOT D. CAIN

By:

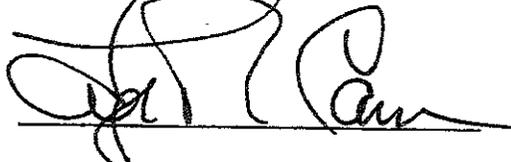
  
Michael J. Wynne, one of the attorneys  
for plaintiffs.

Sonnenschein Nath & Rosenthal LLP  
7800 Sears Tower  
233 South Wacker Drive  
Chicago, IL 60606  
(312) 876-8000  
Firm No. 90784

14514081v2

VERIFICATION

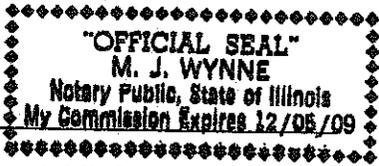
I, Tyler R. Cain, being first duly sworn upon my oath, state that I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and, to the best of my knowledge, information and belief, the allegations therein are true and correct.



Tyler R. Cain

Subscribed and sworn before me

This 24 day of October 2006.



Notary Public

01145758

95 NOV 20 AM 11:29

W/C-27 Return to:  
Chapin, Armstrong & Ballerano  
1201 George Bush Blvd.  
Delray Beach, Florida 33483

DECLARATION OF DOMICILE

MARTIN COUNTY, FLORIDA

This is our Declaration of Domicile and Citizenship in the State of Florida that we are signing this day in conformity with Section 222.17, Florida Statutes.

WE, TALBOT D. CAIN and TYLER R. CAIN, were formerly legal residents of [REDACTED] Illinois. We have changed our domicile to, are and have been bona fide residents of the State of Florida since June 20, 1995. We reside at [REDACTED] Florida. This statement is to be taken as our declaration of citizenship, actual residence and domicile in the State of Florida.

WE FURTHER CERTIFY that we will comply with all requirements of legal residents of the State of Florida.

WE FURTHER CERTIFY that we have no intention to return to our former domicile. We intend to remain legal residents of Hobe Sound, Martin County, Florida.

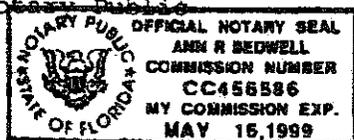
*Talbot D. Cain*  
\_\_\_\_\_  
TALBOT D. CAIN

\_\_\_\_\_  
TYLER R. CAIN

*Talbot D. Cain*  
This instrument prepared by:  
Chapin, Armstrong & Ballerano  
1201 George Bush Blvd.  
Delray Beach, FL 33483

Sworn to and subscribed before me this 13 day of Nov., 1995, by Talbot D. Cain and Tyler R. Cain, who are personally known to me.

*Ann R. Bedwell*  
Notary Public



LAST PAGE

ORBK1149 PGI 694

Illinois Department of Revenue  
Chicago Point of Sale  
Thompson Center  
Chicago, IL

Receipt No.: HAS3007817  
Received: 10/04/2006

J53349184	
INCOME TAX, ITR85A	\$1842582.0
Total:	\$1842582.0
Tendered, Check:	\$1842582.0
Change Due:	\$0.00

Original by: HAFEZ SAITAR  
Printed 10/04/2006 @ 02:51PM

Illinois Department of Revenue  
**Notice of Payment Under Protest**

**Step 1: Identify yourself (and your business, if applicable)**

1 Tyler R. Cain [REDACTED] [REDACTED] [REDACTED]  
 First name Middle initial Last name Social security number

2 [REDACTED]  
 Business name Federal employer identification number

3 [REDACTED]  
 Street address Illinois business tax number

City FL [REDACTED] State ZIP License number

4 [REDACTED]  
 Daytime phone number

**Step 2: Specify what payment is made under protest and the amount**

9 Date 1 0 / 12 0 0 6

10 You will please take notice that \$ 1,842,582.00 of the enclosed or attached remittance in the amount of \$ 1,842,582.00 for taxes due for the period of 12/31/96 - 12/31/04 penalties thereon, and interest accrued to the date of this payment is made under protest as specified in the State Officers and Employees Money Disposition Act, 30 ILCS 230/2a and 2a.1.

11 Write the amount of tax, penalty, and interest paid under protest for each applicable tax type.

	Column A Tax	Column B Penalty	Column C Interest	Column D Total (A+B+C)	Column E Total for tax type
<b>a Retailers' Occupation Tax</b>					
(1) State portion					11a
(2) Local portion					
(3) Mass transit					
(4) Other:					
<b>b Use Tax</b>					
(1) State portion					11b
(2) Local portion					
(3) Mass transit					
(4) Other:					
<b>c Service Occupation Tax/Service Use Tax</b>					
(1) State portion					11c
(2) Local portion					
(3) Mass transit					
(4) Other:					
<b>d Other Occupation Taxes or Fees (Identify tax type — e.g. Automobile Renting Occupation Tax, Tire User Fee.)</b>					
(1)					11d
(2)					
(3)					
(4)					
<b>e Income Tax</b>					
(1) Individual Income Tax	\$1,080,397	\$268,189	\$493,996	\$1,842,582	11e \$1,842,582
(2) Business Income Tax					
(3) Withholding Income Tax					
(4) Other:					
<b>f Excise Tax (Identify tax type — e.g., Hotel Operators' Occupation Tax, Motor Fuel Use Tax.)</b>					
(1)					11f
(2)					
(3)					
(4)					
12 Add Lines 11a through 11f and write the result. This is the total amount paid under protest.					12 \$1,842,582

RECEIVED  
 CHGO CASHIER SECTION  
 3 OCT 04 2006  
 ILLINOIS  
 DEPT. OF REVENUE

**Step 3: Identify and attach the case or cases for which the payment is made under protest**

List the title of the case or cases, the court in which the case or cases are pending, and the general court number assigned to each. If more than one suit is pending, identify the amount paid under protest for each case. If you are filing at more than one location, list the specific city or county and the amount of each payment made under protest. Please tell us if a case has not been filed yet.

**Step 4: Read the statement and sign below**

The undersigned is an original (or intervening) party plaintiff in case or cases identified in the attachment in relation to which the payment identified above is made under protest.

Signature of person making payment under protest [Signature] Authorized officer or agent



Illinois Department of Revenue

# Notice of Payment Under Protest

## Step 1: Identify yourself (and your business, if applicable)

1 Talbot D. Cain 5 [REDACTED] [REDACTED] [REDACTED]  
 First name Middle Initial Last name Social security number

2 [REDACTED] 6 [REDACTED]  
 Business name Federal employer identification number

3 [REDACTED] 7 [REDACTED]  
 Street address Illinois business tax number

City FL [REDACTED] 8 [REDACTED]  
 State ZIP License number

4 ( [REDACTED] )  
 Daytime phone number

## Step 2: Specify what payment is made under protest and the amount

9 Date 1 0 / 2 0 0 6

10 You will please take notice that \$ 1,842,582.00 of the enclosed or attached remittance in the amount of \$ 1,842,582.00 for taxes due for the period of 12/31/96 - 12/31/04, penalties thereon, and interest accrued to the date of this payment is made under protest as specified in the State Officers and Employees Money Disposition Act, 30 ILCS 230/2a and 2a.1.

11 Write the amount of tax, penalty, and interest paid under protest for each applicable tax type.

	Column A Tax	Column B Penalty	Column C Interest	Column D Total (A+B+C)	Column E Total for tax type
<b>a Retailers' Occupation Tax</b>					
(1) State portion					
(2) Local portion					
(3) Mass transit					
(4) Other:					11a
<b>b Use Tax</b>					
(1) State portion					
(2) Local portion					
(3) Mass transit					
(4) Other:					11b
<b>c Service Occupation Tax/Service Use Tax</b>					
(1) State portion					
(2) Local portion					
(3) Mass transit					
(4) Other:					11c
<b>d Other Occupation Taxes or Fees (Identify tax type — e.g. Automobile Renting Occupation Tax, Tire User Fee.)</b>					
(1)					
(2)					
(3)					
(4)					11d
<b>e Income Tax</b>					
(1) Individual Income Tax	\$1,080,397	\$268,189	\$493,996	\$1,842,582	
(2) Business Income Tax					
(3) Withholding Income Tax					
(4) Other:					11e \$1,842,582
<b>f Excise Tax (Identify tax type — e.g., Hotel Operators' Occupation Tax, Motor Fuel Use Tax.)</b>					
(1)					
(2)					
(3)					
(4)					11f

12 Add Lines 11a through 11f and write the result. This is the total amount paid under protest. 12 \$1,842,582

## Step 3: Identify and attach the case or cases for which the payment is made under protest

List the title of the case or cases, the court in which the case or cases are pending, and the general court number assigned to each. If more than one suit is pending, identify the amount paid under protest for each case. If you are filing at more than one location, list the specific city or county and the amount of each payment made under protest. Please tell us if a case has not been filed yet.

## Step 4: Read the statement and sign below

The undersigned is an original (or intervening) party plaintiff in case or cases identified in the attachment in relation to which the payment identified above is made under protest.

Talbot D. Cain  
 Signature of person making payment under protest Authorized officer or agent

TYLER R. CAIN

October 4, 2006

TO: Mr. Brian Hamer  
Director  
Illinois Department of Revenue  
101 West Jefferson Street  
Springfield, IL 62794

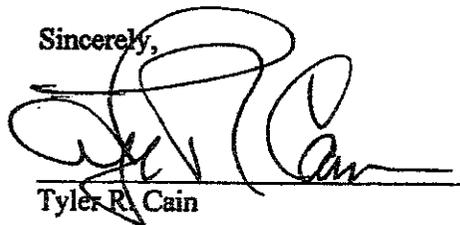
You will please take notice that \$1,842,582 of the enclosed remittance in the amount of \$1,842,582 for the *Illinois personal income tax for tax years 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004*, assessed pursuant to a Notice of Deficiency issued to Tyler R. Cain and Talbot D. Cain on August 18, 2006, is made *under protest* pursuant to the State Officers and Employees Money Disposition Act ("The Protest Moneys Act").

Tyler R. Cain and Talbot D. Cain will be original plaintiffs in the following case, to be filed within 30 days from the date of the aforesaid payment under protest, and in relation to which the aforesaid payment is made under protest:

*Tyler R. Cain and Talbot D. Cain v. Brian L. Hamer, Director, Illinois Department of Revenue; the Illinois Department of Revenue; and Judy Baar Topinka, in her capacity as State Treasurer of Illinois, No. 06 L \_\_\_\_\_, Circuit Court of Cook County, Tax & Miscellaneous Remedies Section.*

Tyler R. Cain and Talbot D. Cain request that the enclosed payment under protest be remitted to the State Treasurer for deposit in the Protest Fund created and maintained pursuant to Section 2a of the Protest Moneys Act. Tyler R. Cain and Talbot D. Cain will seek an injunction as required by Section 2a of the Protest Moneys Act.

Sincerely,



Tyler R. Cain

14510557v1  
Enclosure

cc: Notice Section  
Illinois Department of Revenue  
P.O. Box 19012  
Springfield, IL 62794-9012

The Northern Trust Company  
Chicago, Illinois www.northerntrust.com



Northern Trust

WF 46021

October 03, 2006

2-15710

Reissuer: TYLER CAIN

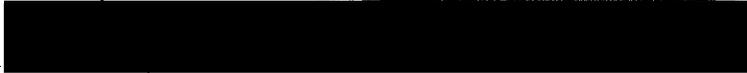
Pay to the order of \*ILLINOIS DEPARTMENT OF REVENUE\*

\$ 1,842,582.00

\*\*\*One Million Eight Hundred Forty Two Thousand Five Hundred Eighty Two and 00/100

Cashier's Check

*Carmine Malfo*  
Authorized Signature





**Illinois Department of Revenue**

101 W. Jefferson St.  
Springfield, IL 62702

**NOTICE OF DEFICIENCY**

Tyler R. & Talbot D. Cain  
[REDACTED]

August 18, 2006

FORM: IL-1040

SSN: [REDACTED]

TAXABLE YEARS ENDING:  
12/31/1996, 12/31/1997, 12/31/1998,  
12/31/1999, 12/31/2000, 12/31/2001,  
12/31/2002, 12/31/2003, 12/31/2004

STATUTORY DEFICIENCY:  
\$ 1,348,586.00

INTEREST TO DATE:  
\$ 493,996.00

TOTAL AMOUNT DUE:  
\$ 1,842,582.00

Pursuant to Section 904(c) of the Illinois Income Tax Act, notice is hereby given that the determination of your income tax liability for the above-noted taxable year discloses a deficiency in the amount shown above. The attached statement contains explanations of the adjustments and shows the computation of the deficiency.

IF YOU AGREE to this determination and pay the Total Amount Due shown above within thirty (30) days of the date of this notice, no additional interest will accrue. The payment should be forwarded to the address shown below.

IF YOU DO NOT AGREE, Section 908(a) of the Act provides that the Department shall reconsider the proposed assessment if within 60 days of the date of this notice, the taxpayer or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the assessment proposed, you may file a protest and, if desired, request a hearing. A protest, if filed, should be forwarded to the address shown below.

IF AN ADEQUATE AND TIMELY PROTEST is not received, the total amount of the deficiency shown will be deemed assessed as of the expiration of the aforementioned 60-day period pursuant to Section 903(a)(2) and 904(d). If no protest is filed and if the tax liability is not paid within 60 days of the date of this notice, a 15% penalty will be assessed under Section 3-3(b)(2) of the Uniform Penalty and Interest Act for liabilities which became due on or after January 1, 1994. (The penalty rate is 20% for liabilities due on or after January 1, 1998.) If the tax remains unpaid after a demand for payment, the Act permits, in addition to other remedies, the seizure and sale of real and personal property to enforce collection.

Sincerely,

Brian Hamer  
Director

Enclosures: EAR-14, IDR-867  
Return Envelope

NOTICE SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD, IL 62794-9012  
PHONE: 217-785-9375  
ATTENTION: LF 884171

cc: Robert Jacobson  
Friedman & Huey Associates, LLP  
1313 W. 175<sup>th</sup> Street  
Homewood, IL 60430

Tyler R. & Talbot D. Cain

**STATEMENT**

We obtained information from the Internal Revenue Service under authorization of the Internal Revenue Code, Section 6103(d).

We determined your correct Illinois income tax for the taxable years ended December 31, 1996, December 31, 1997, December 31, 1998, December 31, 1999, December 31, 2000, December 31, 2001, December 31, 2002, December 31, 2003, and December 31, 2004 because you failed to file an income tax return as required by Illinois law. [IITA Section 201(a)]

We are imposing a late-filing or nonfiling penalty for the taxable years ended December 31, 1996, December 31, 1997, December 31, 1998, and December 31, 1999 because you did not file a return by the due date (including any extended due date). This penalty is equal to the lesser of \$250 or 2 percent of the tax required to be shown due on your return, without regard to any payments and credits. This penalty is imposed the day after the original due date of your return, including any extended due date. [35 ILCS 735/3-3(a-5)]

We are imposing a late-filing or nonfiling penalty for the taxable years ended December 31, 2000, December 31, 2001, December 31, 2002, December 31, 2003, and December 31, 2004 because you did not file a return by the due date (including any extended due date). This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on your return, after subtracting any payments made or credits allowed by the due date of the return. This penalty is imposed the day after the original due date of your return, including any extended due date. This penalty cannot exceed \$250. [35 ILCS 735/3-3(a-10)]

We are imposing an underpayment of estimated tax penalty for the taxable year ended December 31, 1996 because you did not pay the required amount by the payment due date. This penalty is 15 percent of the required estimated tax due for each quarter, after any timely payments and credits. [35 ILCS 735/3-3(b)(1)]

We are imposing an underpayment of estimated tax penalty for the taxable years ended December 31, 1997, December 31, 1998, and December 31, 1999 because you did not pay the required amount by the payment due date. This penalty is 20 percent of the required estimated tax due for each quarter, after any timely payments and credits. [35 ILCS 735/3-3(b-5)(1)]

We are imposing a late-payment penalty for underpayment of estimated tax for the taxable years ended December 31, 2000, December 31, 2001, and December 31, 2002 because you did not pay the required amount of estimated tax payment by the payment due date. This penalty is based on the amount required to be shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 5 percent of any amount that is paid later than 30 days but no later than 90 days after the due date;
- 10 percent of any amount that is paid later than 90 days but no later than 180 days after the due date;
- 15 percent of any amount that is paid later than 180 days after the due date.

[35 ILCS 735/3-3(b-10)(1)]

Tyler R. & Talbot D. Cain

We are imposing a late-payment penalty for underpayment of estimated tax for the taxable year ended December 31, 2003 because you did not pay the required amount of estimated tax payments by the payment due date. This penalty is based on the amount shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days but no later than 90 days after the due date;
- 15 percent of any amount that is paid later than 90 days but no later than 180 days after the due date;
- 20 percent of any amount that is paid later than 180 days after the due date.

[35 ILCS 735/3-3(b-15)(1)]

We are imposing an additional late-payment penalty for the taxable year ended December 31, 2004 because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions within 30 days after the "Issuance Date" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Issuance Date" on the Form IL-870 results in this penalty increasing to 20%.

[35 ILCS 735/3-3(b-20)(2)]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2003, through November 17, 2003, your penalty and interest amounts may be doubled.

[35 ILCS 521/101(b)]

Shoreacres  
1601 Shoreacres  
Lake Bluff, IL 60044

Date: 06/30/05

STATEMENT

Account: [REDACTED]

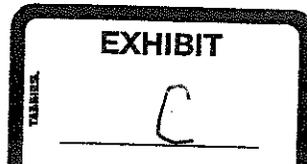
MR. TYLER R. CAIN  
[REDACTED]

Total Due: 34,831.70

Date	Ref	Description	Charge	Scv	Tax	Total	Payment	Balance
		Balance Forward:						939.20
06/16	859200	CH Dinner	182.50		11.86	194.36		1133.56
06/17	007941	SARA CARROLL FIE	58.00			58.00		1191.56
06/17	34691	TITLEIST SOLO	8.50					
		TITLEIST SOLO	8.50					
		Total:	17.00		1.10	18.10		1209.66
06/17	34736	Caddy Charge	80.00			80.00		1289.66
06/19	34811	SLAZENGER HARD C	64.00					
		SLAZENGER HARD C	64.00					
		Total:	128.00		8.32	136.32		1425.98
06/19	34914	Caddy Charge	26.00					
		Cart Fee	26.00					
		Total:	52.00			52.00		1477.98
06/19	871600	MLR Grille	25.50		1.66	27.16		1505.14
06/19	PAYMNT	PAYMENT					939.20	565.94
06/23	35138	Guest Fees	600.00			600.00		1165.94
06/23	889800	MLR Grille	21.00		1.37	22.37		1188.31
06/24	007994	CH Dinner	11794.50	2123.01	904.64	14822.15		16010.46
06/24	015043	Misc. Rental	2740.22			2740.22		18750.68
06/24	048806	Bev. CH Dinner	10600.00	1908.00	813.02	13321.02		32071.70
06/25	007255	Wedding Brunch	725.00			725.00		32796.70
06/25	007259	Wedding Brunch	725.00			725.00		33521.70
06/25	007260	Wedding Brunch	725.00			725.00		34246.70
06/25	007898	CREDIT FOR BRUNCH					5075.00	29171.70
06/25	007995	BUFFET BRUNCH	5075.00			5075.00		34246.70
06/25	015041	PIANO TUNING & M	285.00			285.00		34531.70
06/25	015042	LINEN PREP & SHI	300.00			300.00		34831.70

Current	30 Days	60 Days	90 Days	Total Due
34831.70	.00	.00	.00	34831.70

CAI01 MR. TYLER R. CAIN



Shoreacres  
 1601 Shoreacres  
 Lake Bluff, IL 60044

Date: 07/31/05

STATEMENT

Account: [REDACTED]

MR. TYLER R. CAIN  
 [REDACTED]

Total Due: 3,617.52

Date	Ref	Description	Charge	Scv	Tax	Total	Payment	Balance
		Balance Forward:						34831.70
07/04	005768	Buffet	480.00		31.20	511.20		35342.90
07/04	047017	Bev. CH Dinner	244.00		15.86	259.86		35602.76
07/07	007266	CREDIT BRUNCH					725.00	34877.76
07/07	007267	CREDIT BRUNCH					725.00	34152.76
07/07	007268	CREDIT BRUNCH					725.00	33427.76
07/07	007269	WEDDING BRUNCH	5075.00			5075.00		38502.76
07/07	PAYMNT	PAYMENT					5075.00	33427.76
07/09	973900	CH Dinner	232.75		15.13	247.88		33675.64
	14 36322	TITLEIST PRO V1	13.50		.88	14.38		33690.02
	14 36492	Caddy Charge	15.00					
		Cart Fee	25.00					
		Total:	40.00			40.00		33730.02
07/14	993300	MLR Grille	6.00		.39	6.39		33736.41
07/15	36588	Cart Fee	26.00					
		Caddy Charge	20.00					
		Guest Fees	80.00					
		Total:	126.00			126.00		33862.41
07/16	002900	MLR Grille	21.50		1.40	22.90		33885.31
07/16	36521	TITLEIST PRO V1	13.50		.88	14.38		33899.69
07/16	36656	Caddy Charge	30.00					
		Cart Fee	50.00					
		Total:	80.00			80.00		33979.69
07/17	007600	MLR Grille	37.50		2.44	39.94		34019.63
07/17	010300	CH Dinner	247.50		16.09	263.59		34283.22
07/23	PAYMNT	PAYMENT					32656.70	1626.52
07/31	062500	MLR Grille	41.00		2.67	43.67		1670.19
07/31	064800	MLR Grille	12.75		.83	13.58		1683.77
07/31	37551	Caddy Charge	95.00			95.00		1778.77

Current	30 Days	60 Days	90 Days	Total Due
3617.52	.00	.00	.00	3617.52

CAI01 MR. TYLER R. CAIN

Continued...

Shoreacres  
1601 Shoreacres  
Lake Bluff, IL 60044

Date: 07/31/05

STATEMENT

Account: [REDACTED]

MR. TYLER R. CAIN  
[REDACTED]

Total Due: 3,617.52

Date	Ref	Description	Charge	Scv	Tax	Total	Payment	Balance
07/31	F24193	Dues	1838.75			1838.75		3617.52

Current	30 Days	60 Days	90 Days	Total Due
3617.52	.00	.00	.00	3617.52

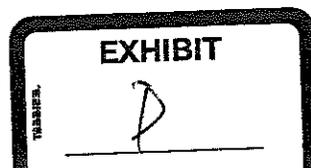
CAI01 MR. TYLER R. CAIN

CLUBS	2003		2004		2005		2006		2007		2003 to 2007	
SHOREACRES	\$ 16,944.68	\$ 11,327.31	\$ 14,929.40	\$ 8,937.62	\$ 12,181.63							\$ 64,320.64
ONWENTZIA CLUB	\$ 17,420.01	\$ 18,174.06	\$ 16,943.92	\$ 27,673.35	\$ 18,727.82							\$ 98,939.16
THE RACQUET CLUB OF CHICAGO	\$ 3,430.28	\$ 5,288.79	\$ 2,648.00	\$ 6,243.49	\$ 1,579.66							\$ 19,190.22
OLD ELM CLUB	\$ 11,942.32	\$ 6,390.02	\$ 18,996.52	\$ 11,732.87	\$ 4,455.17							\$ 53,516.90
IL TOTALS	\$ 49,737.29	\$ 41,180.18	\$ 53,517.84	\$ 54,587.33	\$ 36,944.28							\$ 235,966.92
SEMINOLE GOLF CLUB	\$ 10,039.10	\$ 10,595.41	\$ 10,118.59	\$ 10,208.95	\$ 10,595.35							\$ 51,557.40
JUPITER ISLAND GROUP, INC.	\$ 41,103.51	\$ 68,392.49	\$ 54,359.40	\$ 56,893.31	\$ 55,783.24							\$ 276,531.95
HOBE SOUND YACHT CLUB	\$ 10,010.28	\$ 11,551.26	\$ 6,278.26	\$ 7,676.41	\$ 7,856.15							\$ 43,372.36
THE EVERGLADES CLUB, INC.	\$ 9,767.54	\$ 10,408.87	\$ 9,693.00	\$ 10,758.21	\$ 10,453.05							\$ 51,080.67
FL TOTALS	\$ 70,920.43	\$ 100,948.03	\$ 80,449.25	\$ 85,536.88	\$ 84,687.79							\$ 422,542.38
THE BROOK - NY	\$ 1,976.86	\$ 1,853.74	\$ 1,871.96	\$ 2,012.51	\$ 1,886.98							\$ 9,602.05
COLONY CLUB - NY	\$ 2,016.23	\$ 3,243.52	\$ 2,215.74	\$ 2,227.00	\$ 3,591.69							\$ 13,294.18
NY TOTALS	\$ 3,993.09	\$ 5,097.26	\$ 4,087.70	\$ 4,239.51	\$ 5,478.67							\$ 22,896.23
ROLLING ROCK CLUB - PA	\$ 1,360.00	\$ 1,324.00	\$ 1,740.51	\$ 1,632.00	\$ 6,349.07							\$ 12,405.58

ILLINOIS / FLORIDA DAYS\*

	ILLINOIS	FLORIDA	TOTAL
1996	161	159	320
1997	159	165	324
1998	167	171	338
1999	171	168	339
2000	167	171	338
2001	167	175	342
2002	164	175	339
2003	177	164	341
2004	171	170	341
2005	163	182	345

\*10 Year Average Days Outside of Illinois = 54%  
(198 Days)



## MEETING MINUTES

Project: Cain Residence  
Project No.: 0412  
Location: Lake Forest  
Dates: 17 December 2004  
Conversation: Talbot Cain  
Present: Tyler Cain  
Kirsten Beeby (HBRA)  
Tom Beeby (HBRA)

1. Reviewed the enlarged floor plans.
2. Dining Room and living Room sizes seem adequate.
3. An octagonal space at the east end of the main hall is preferred. HBRA to redesign/.
4. Office to have seating group and counter along east wall.
5. Connection between Master Bedroom and Office is desirable but not mandatory.
6. Add a tub in her bath.
7. Master Bedroom from sitting area to be somewhat more visually separated.
8. Add openings with doors at Living Room and Dining Room to main hall.
9. Audio equipment will most likely be located in the Library. The Cains will confirm the location.
10. Keep 42" minimum aisle width in Butler's Pantry.
11. Enlarge Garage door width to 9' and allow space for storage.
12. Maximize Garage SF to 800 SF.
13. Condenser units could be located in the motor court near the back door.
14. Talbot will provide appliance selections.
15. A forced air system may be adequate for the house. The house is being lived in mainly during summer time. A forced air system and in addition a radiant heat system should be priced.
16. Entry door should be solid wood with transom light above.
17. The Cains prefer to eliminate the steps into the house.
18. The windows including the dormier windows should have shallow arches.
19. The roof could be vented through the cupola.
20. Parquet des Versailles floors to be priced for Living Room and Dining Room.
21. Salvaged limestone floor for the Main Hall.
22. Living Room and Library to be fully wood paneled, Dining Room wood wainscot with wallpaper above.
23. There should be four bedrooms and three baths on the second floor. HBRA to revise layout.
24. HBRA to consult with Peter Coutant to review the plans and elevations.
25. HBRA to prepare drawings and scope of work for the Cain's review and recommend three contractors for preliminary budget pricing.

The above constitutes our understanding of the issues discussed. Please contact us for any additions, clarification, or corrections.

CC: All Present  
KM

# TAB 5

## Wynne, Michael J.

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**From:** Coveny, Michael <Michael.Coveny@Illinois.gov>  
**Sent:** Friday, September 24, 2010 3:53 PM  
**To:** Wynne, Michael J.  
**Cc:** Husain, Mohib  
**Subject:** Cain v. DOR  
**Attachments:** Cain - Stipulation of Fact - DOR Revision.docx

Mike,

Attached are my proposed changes to the stipulation. We need to resolve the Florida house FMV issue. Also, while the stip reflects some of the partnership entities, it appears to be missing TRC III Investments and TDC Investments, two partnerships Tyler formed. I don't necessarily want to attach the entire 1065 for each entity, maybe only the first few pages in order to keep the size down but I don't object if you want the whole return attached. We can discuss. Thanks for your patience.

Michael Coveny  
Assistant Attorney General  
Office of the Illinois Attorney General  
Revenue Litigation Bureau - Rm. 13-226  
100 West Randolph Street  
Chicago, IL 60601  
(312) 814-4142

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**-IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - LAW DIVISION  
TAX AND MISCELLANEOUS REMEDIES SECTION**

Tyler and Talbot Cain,

Plaintiffs,

v.

Brian Hamer, in his official capacity as  
Director, Illinois Department of Revenue; the  
Illinois Department of Revenue; and, Alexis  
Giannoulis, in his official capacity as State  
Treasurer of the State of Illinois,

Defendants.

No.: 06 L 050986

Judge Elmer Tolmaire

**STIPULATION OF FACTUAL MATTERS**

The Plaintiffs, Tyler and Talbot Cain (the "Cains"), and the Defendants, the Illinois Department of Revenue (the "Department"), Brian Hamer, as Director of the Department, and Judith Baar Topinka, as State Treasurer (collectively all as the "Defendants"), agree and stipulate to the following factual matters:

1. The relevant tax periods are the years ending December 31, 1996 through December 31, 2004 (the "Relevant Period").
2. Tyler Cain was born and raised in Illinois. He graduated from New Trier High School in Winnetaka and attended several colleges outside Illinois before returning to Illinois and graduating from Lake Forest College in Lake Forest Illinois with a bachelor of arts degree.
- 4-3. Talbot Cain was born in Norfolk Virginia and graduated from high school in Washington, D.C. She graduated from Mary Washington College in Fredericksburg, Virginia before moving to New York to work for Conde Nast Publication for three years.

4. \_\_\_\_\_

~~2-5.~~ More than 46 years ago, the Cains were married in Illinois and spent their honeymoon in Jupiter Island, in Martin County, Florida, and then returned to Illinois to work, live, and raise a family.

~~3-6.~~ Until 1990, Mr. Cain was self-employed, as a trader owning a seat in the Chicago Board of Options Exchange.

~~4-7.~~ On December 10, 1990, Mr. Cain sold his seat at the CBOE for \_\_\_\_\_

~~5-8.~~ Mr. Cain \_\_\_\_\_ ceased trading activity through the Chicago Board of Options. ~~as~~

#### Real Property Contacts

#### **FLORIDA**

~~6-9.~~ The Cains' home is located at \_\_\_\_\_

Florida.

~~7-10.~~ Since 1995, the Cains have ~~qualified for and~~ claimed a homestead exemption on their home at \_\_\_\_\_ Florida.

~~8-11.~~ The Cains purchased the land on which they built their home located at \_\_\_\_\_ Florida, in 1987.

~~9-12.~~ The construction of the Cains' home, located at \_\_\_\_\_ Florida, was completed in 1990.

~~10-13.~~ The Cains also purchased a three-bedroom, 2.5 baths, 2 car garage townhouse at \_\_\_\_\_ Florida, for \_\_\_\_\_, on September 28, 2005, which is available for their children and families to use.

~~14.~~ According to the Martin County, Florida, assessor, the approximate market value of the Cains' home located at \_\_\_\_\_ Florida is \_\_\_\_\_

~~11-15.~~ According to the Martin County, Florida, assessor, there are two dwellings on parcel ID No. 35-38-42-015-000-00010-9, located at 316 South Beach Road, Hobe Sound, Florida, the main house with an approximate square footage of 6,322 and a guesthouse with an

approximate square footage of 1,004.

## ILLINOIS

16. Before 1995, the Cain's long-time home and residence was at [REDACTED] Illinois, where they raised their family.
17. According to the Lake County, Illinois, assessor, the approximate market value of the Cains' home located at [REDACTED] Illinois is [REDACTED].
18. According to the Lake County, Illinois assessor, the approximate square footage of the Cains' home located at [REDACTED] Illinois is 6,592.
- ~~12-19.~~ In August of 2006, the Lake Forest Historic Preservation Commission considered a request for approval, submitted by architect Thomas Beeby, for a Certificate of Appropriateness for a proposed addition to the Cains' property at [REDACTED] Illinois. A copy of the minutes of from the Commision's meeting is attached as an Exhibit.
- ~~13-20.~~ Illinois homestead exemptions, once granted, continue from year to year without reapplication or renewal.
- ~~14-21.~~ The Cains ~~affirmatively~~ contacted the Lake County assessor and discontinued the homestead exemption in Illinois several years ago, but after the Relevant Period, having ~~inadvertently~~ received a homestead exemption after 1995.
- ~~15-22.~~ After 1995, in an effort to downsize from their former home at [REDACTED] the Cains purchased property located at [REDACTED] Illinois, intending at the time to construct a house using the proceeds from the sale of their home at [REDACTED] Illinois.
23. On the Transfer Declaration for the property located at [REDACTED] Illinois from the purchase of the property by the Cains, the form was marked to indicate that this property was not the Cain's principle residence.

~~16-24.~~ After purchasing the above property, the Cains retained the services of an Illinois architect, Thomas Beeby, to design the house and submit the proposed design to the Lake Forest Historic Preservation Commission for the necessary approval. Minutes of a meeting between the Cains and their architect, prepared by the architect, reflecting their discussion of plans for the proposed house at 333 North Green Bay Road in Lake Forest are ~~The architect prepared minutes of a meeting with the Cains in 2004 discussing the plans for the house which minutes are attached as an Exhibit.~~

~~17-25.~~ The Cains ultimately abandoned their plan to downsize to a home at 333 North Green Bay Road as the costs of construction became too expensive.

~~18-26.~~ According to the Martin County, Florida, assessor, the approximate market value of the Cains' home located at 316 South Beach Road, Hobe Sound, Florida is \$8,142,750.

~~19-27.~~ The market value of the Cains' permanent residence in Florida is more than 2.7 times greater than the market value of their house in Illinois.

**Comment [A1]:** This should come out until we resolve the Florida FMV

#### Contacts Other Than Real Estate

~~20-28.~~ The Cains executed their Declaration of Domicile in Florida on November 13, 1995, which was recorded in Martin County, Florida, on November 20, 1995. A true and accurate copy of which is attached hereto as Exhibit 1.

~~21-29.~~ Mr. Cain has a Permanent Resident Identification Card issued by the State of Florida on November 13, 1995, which is currently and was valid for the entire Relevant Period. A true and accurate copy of which is attached hereto as Exhibit 3.

~~22-30.~~ Mrs. Cain has a Permanent Resident Identification Card issued by the State of Florida on March 11, 1996, which is currently and was valid for the Relevant Period beginning on March 11, 1996. A true and accurate copy of which is attached hereto as Exhibit 6.

~~23-31.~~ During the Relevant Period, Mr. Cain's personal use cellular phone number has a Florida area code ("772").

~~24-32.~~ During the Relevant Period, the Cains subscribed to the following publications, which are delivered to their Florida residence:

- A. Palm Beach Post;
- B. New York Times;
- C. Investors Business Daily; and
- D. Wall Street Journal.

25-33. During the Relevant Period, the Cains established patient relationships with the following doctors located in Florida:

- A. Dr. Mark Groeke, Internist, since 2003;
- B. Dr. Peter Lascheid, Dentist, during the entire Relevant Period;
- C. Dr. Warren Zwecker, Dermatologist, during the entire Relevant Period; and
- D. Dr. Elise Hillman, Dermatologist, during the entire Relevant Period.

34. During the Relevant Period, the Cains retained patient relationships with the following doctors in Illinois:

- A. Dr. Jerry Osher, Internist;
- B. Dr. Lloyd Sigmund, Dentist
- C. Dr. Julia Marshall, Dermatologist

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26-35. The Cains estate plans relied upon a Florida attorney, Robert Chapin, for administration and implementation.

36. During the Relevant Period, the Cains employed the services of various legal advisors in Florida.

27-37. During the Relevant Period, the Cains employed the services of tax preparers in Illinois to prepare both their personal and partnership / S Corporation federal income tax returns.

28-38. During the Relevant Period, Mrs. Cain was a member of the Jupiter Island Bridge Club in Jupiter Island, Florida, and actively participated in bridge tournaments.

29-39. According to the Cains' American Express statements for the period from July 12, 2001 through August 19, 2004, 73% of their expenditures were made outside of Illinois, and they were making those expenditures outside of Illinois 61% of the time. A true and accurate copy of which is attached hereto as Exhibit 7.

30-40. The Cains have two pieces of art work, among others, in their Florida residence, one value between [REDACTED] and [REDACTED] and the other value in excess of [REDACTED]. The combined value of these two paintings is greater than the total value of all art work owned by the Cains located in Illinois.

31-41. The Cains purchased burial plots in Martin County, Florida.  
Voter Registration, Voting, Licenses, Identification and Jury Duty

32-42. During the Relevant Period, Mr. Cain had a Concealed Weapon or Firearm License issued by the State of Florida. A true and accurate copy of which is attached hereto as Exhibit 2.

33-43. During the Relevant Period, Mr. Cain had a Driver's License issued by the State of Florida. A true and accurate copy of which is attached hereto as Exhibit 4.

44. During the Relevant Period, ~~Mr the. Cains were both~~ was registered to vote in Florida.

34. —

35-45. During the Relevant Period, Mrs. Cain had a Driver's License issued by the State of Florida. A true and accurate copy of which is attached hereto as Exhibit 5.

~~Mrs. Cain participated in the 2000 and 2004 Florida elections through absentee ballot, even though she was physically present in Florida at the time~~ Public records from the Martin County, Florida Supervisor of Elections show the following identical voting history for both Tyler and Talbot Cain:

<u>Year</u>	<u>In Person / Absentee</u>
<u>1996</u>	<u>Absentee</u>
<u>1998</u>	<u>Absentee</u>
<u>1999</u>	<u>In Person</u>
<u>2000</u>	<u>In Person</u>
<u>2001</u>	<u>In Person</u>

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2002	Absentee
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36.

37-46. Mr. Cain was summoned for jury duty in Florida during the winter of 2000. He served and was dismissed.

38-47. During the Relevant Period, Mr. Cain was summoned a second time for jury duty in Florida, but was dismissed because he had prostate cancer.

39-48. Mrs. Cain was summoned for jury duty in Florida during the summer of 2001, but was unable to serve.

40-49. Mrs. Cain was summoned for jury duty in Florida during the winter of 2002. She reported for duty and was dismissed.

41-50. Neither Mr. nor Mrs. Cain was called for or served jury duty in Illinois during the Relevant Period.

51. ~~During the Relevant Period, Mr. Cain made multiple donations to political candidates running for office in Florida, nationally and in Illinois.~~ According to public records, during the relevant period, Mr. Cain made the following political contributions:

Candidate	Office	Amount
		500
		2,000
		1,000
		250
		500
		1,000
		1,000

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43-52. Donations made to national and non-Illinois candidates exceeded the amount made to Illinois candidates.

Automobiles

44-53. During the Relevant Period, the Cains had no automobiles registered in Illinois.

45-54. The Cains rented a car in Illinois each year during the Relevant Period for approximately 2 weeks in December, while visiting family and friends in Illinois around the Christmas holidays.

Physical Presence in Florida, Illinois and Elsewhere

46-55. The Cains were physically present in Florida, Illinois and outside of both Florida and Illinois approximately the following number of days each year in the Relevant Period:

Year	Days in Florida	Days in Illinois	Days Elsewhere	Percent Outside of Illinois
1996	159	161	45	56%
1997	165	159	41	56%
1998	171	167	27	54%
1999	168	171	26	53%
2000	171	167	27	54%
2001	175	167	23	54%
2002	175	164	26	55%
2003	164	177	24	52%
2004	170	171	24	53%
2005	182	162	21	56%
<b>Totals for Relevant Period</b>	<b>1,700</b>	<b>1,666</b>	<b>284</b>	<b>54%</b>

The Cains Spending at Private Clubs

47-56. The Cains spent the following amounts at their private clubs in Florida, Illinois, New York and Pennsylvania from 2003 through 2007:

Illinois Clubs	2003	2004	2005	2006	2007	Totals
Shoreacres	\$16,945	\$11,327	\$14,929	\$8,938	\$12,182	\$64,322
Onwentsia Club	\$17,420	\$18,174	\$16,944	\$27,673	\$18,728	\$98,939
The Racquet Club of Chicago	\$3,430	\$5,289	\$2,648	\$6,243	\$1,580	\$19,190
Old Elm Club	\$11,942	\$6,390	\$18,997	\$11,733	\$4,455	\$53,517

<b>Illinois Totals</b>	<b>\$49,737</b>	<b>\$41,180</b>	<b>\$53,518</b>	<b>\$54,587</b>	<b>36,945</b>	<b>\$235,967</b>
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<b>Florida Clubs</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>Totals</b>
Seminole Golf Club	\$10,039	\$10,595	\$10,119	\$10,209	\$10,595	\$51,557
Jupiter Island Group, Inc.	\$41,104	\$68,392	\$54,359	\$56,893	\$55,783	\$276,531
Hobe Sound Yacht Club	\$10,010	\$11,551	\$6,278	\$7,676	\$7,856	\$43,371
The Everglades Club, Inc.	\$9,768	\$10,409	\$9,693	\$10,758	\$10,453	\$51,081
<b>Florida Totals</b>	<b>\$70,921</b>	<b>\$100,947</b>	<b>\$80,449</b>	<b>\$85,536</b>	<b>\$84,687</b>	<b>\$422,540</b>

<b>New York Clubs</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>Totals</b>
The Brook Club	\$1,977	\$1,854	\$1,872	\$2,013	\$1,887	\$9,603
Colony Club	\$2,016	\$3,244	\$2,216	\$2,227	\$3,592	\$13,295
<b>New York Totals</b>	<b>\$3,993</b>	<b>\$5,098</b>	<b>\$4,088</b>	<b>\$4,240</b>	<b>\$5,479</b>	<b>\$22,898</b>

<b>Pennsylvania Club</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>Totals</b>
Rolling Rock Club	\$1,360	\$1,324	\$1,741	\$1,632	\$6,349	\$12,406
<b>Pennsylvania Totals</b>	<b>\$1,360</b>	<b>\$1,324</b>	<b>\$1,741</b>	<b>\$1,632</b>	<b>\$6,349</b>	<b>\$12,406</b>

The Cains Actively Participated in Organizations In Florida and Illinois

48.57. Mr. Cain was a member or served on the board of directors/governors/trustees or on a committee of the following organizations:

<b>Organization</b>	<b>Location</b>	<b>Position Held</b>	<b>Time Period</b>
Jupiter Medical Center	Jupiter, FL	Board of Directors and Planning Committee	1995 – 1999
Jupiter Medical Center Foundation	Jupiter, FL	Board of Directors	2005 – present
Jupiter Island Medical Clinic	Hobe Sound, FL	Board of Directors	2007 – present
Jupiter Island Club	Hobe Sound, FL	Member, Buyout Committee (1993-2002) and Board of Governors (1993-2002)	1988 – present
Hobe Sound Yacht Club	Hobe Sound, FL	Member	1994 – present
The Everglades Club	Palm Beach, FL	Member	1996 – present
The Four Arts Club	Palm Beach, FL	Member	2003 – present
Seminole Golf Club	Juno Beach, FL	Member	1989 – present
Onwentsia Club	Lake Forest, IL	Member	1972 – present
Shoreacres Club	Lake Bluff, IL	Member, Board of Governors (2000-2005)	1985 – present
The Racquet Club	Chicago, IL	Member	1975 – present

Old Elm Club	Highwood, IL	Member	1985 – present
Lake Forest College	Lake Forest, IL	Board of Trustees	2006 – present

49-58. Mrs. Cain was a member or served on the board of directors/governors/trustees or on a committee of the following organizations:

Organization	Location	Position Held	Time Period
Jupiter Island Club	Hobe Sound, FL	Member	1988 – present
Hobe Sound Yacht Club	Hobe Sound, FL	Member and Board of Governors (2000-2004, 2006)	1994 – present
The Everglades Club	Palm Beach, FL	Member	1996 – present
The Four Arts Club	Palm Beach, FL	Member	2003 – present
Seminole Golf Club	Juno Beach, FL	Member	1989 – present
Onwentsia Club	Lake Forest, IL	Member	1972 – present
Shoreacres Club	Lake Bluff, IL	Member	1985 – present
The Racquet Club	Chicago, IL	Member	1975 – present
Old Elm Club	Highwood, IL	Member	1985 – present

50-59. The Cains attended most regularly scheduled meetings (ten per year) at the Jupiter Island Club, located in Hobe Sound, FL, since 1999 through the remainder of the Relevant Period.

51-60. Mr. Cain attended most regularly scheduled Board of Governors meetings (eight per year) at the Shoreacres Club, located in Lake Bluff, IL, during the Relevant Period, except for meetings during November through May.

52-61. Mr. Cain attended most regularly scheduled Board of Trustees meetings (four per year) at Lake Forest College, located in Lake Forest, IL, during the Relevant Period.

#### The Cains' Investment Entities

53-62. The majority of Mr. Cain's income during the Relevant Period was derived from dividends, interest and capital gains.

54-63. During the Relevant Period, the Cains used an Illinois address on their partnership and s corporation federal income tax returns because they had trouble receiving mail at their Florida residence.

~~55-64.~~ During the Relevant Period, Mr. Cain did not perform any personal services for TRC Trading, Inc.

~~56-65.~~ TRC Trading, Inc. had no paying clients at any time during the Relevant Period.

~~57-66.~~ During the Relevant Period, TRC Trading, Inc. never offered or provided services to the public.

~~58-67.~~ On the tax returns for TRC Trading, Inc., during the Relevant Period through 2004, a deduction was taken for a pension plan, which had previously been created for the benefit of Mr. Cain.

~~59-68.~~ Mr. Cain never prepared the tax returns for TRC Trading, Inc.

~~60-69.~~ Mr. Jacobson, a certified public accountant, prepared tax returns for the various partnerships and companies owned by the Cains during the Relevant Period.

~~61-70.~~ Mr. Jacobson recommended that Mr. Cain's pension plan be terminated in 2004 when he began preparing TRC Trading, Inc.'s tax returns, since there was no business activity taking place and there was no reason to have such liability.

~~62-71.~~ During the Relevant Period, Mr. Cain made only a few trades (approximately ten or less) each year through TRC Trading, Inc.

~~63-72.~~ The Tyler R. Cain Family Foundation (the "Foundation") was organized to facilitate charitable donations.

~~64-73.~~ During the Relevant Period, through the Foundation, the Cains donated approximately \$2.5 million to various charities located in both Florida and Illinois.

~~65-74.~~ During the Relevant Period, Mr. Cain was (and currently continues to be) in the process of shifting the majority of donations made by the Foundation from charities located in Illinois to charities located in Florida.

~~66-75.~~ Mrs. Cain is an Illinois licensed interior designer, which license she obtained in or around 1992.

~~67-76.~~ Mrs. Cain has never conducted business within or without Illinois as an interior designer, having obtained and used her Illinois license for personal decorating activities.

~~68~~.77. During the Relevant Period, Mrs. Cain was an owner of Design III, which was an organization that Mrs. Cain and a few others used to purchase interior design materials for personal use. Mrs. Cain never intended to and never did provide services for profit through this organization.

~~69~~.78. Mrs. Cain's involvement in Design III gave her access to the Design Center in Florida and New York.

Documents

~~70~~.79. The parties have stipulated to the accuracy and authenticity of the following documents as group exhibits, which are attached hereto and referenced by the associated letters and tabs:

- A. The Cains' American Express statements for the time period from July 12, 2001 through August 19, 2004;
- B. Net Jets Customer Activity Report for the time period from 1995 through 2005;
- C. The following tax returns:

Tab	YEAR	TAXPAYER	TYPE OF RETURN
1	1996	Tyler & Gertrude Cain	Florida Individual and Joint Intangible Tax Return for Individual and Joint Filers as of January 1, 1996
2	1997	Tyler & Gertrude Cain	Florida Individual and Joint Intangible Tax Return for Individual and Joint Filers as of January 1, 1997
3	1998	Tyler & Gertrude Cain	Florida Individual and Joint Intangible Tax Return for Individual and Joint Filers as of January 1, 1998
4	2004	Rolly Investments, L.P.	1065 U.S. Return of Partnership Income
5	1998	TRC Investments, LLC	1065 Initial Return - U.S. Return of Partnership Income
6	1999	TRC Investments, LLC	1065 U.S. Return of Partnership Income
7	1999	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
8	2000	TRC Investments, LLC	1065 U.S. Return of Partnership Income
9	2000	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
10	2001	TRC Investments, LLC	1065 U.S. Return of Partnership Income
11	2001	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
12	2002	TRC Investments, LLC	1065 U.S. Return of Partnership Income
13	2002	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
14	2003	TRC Investments, LLC	1065 U.S. Return of Partnership Income
15	2003	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
16	2004	TRC Investments, LLC	1065 U.S. Return of Partnership Income

17	2004	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
18	2002	TDC Investments, L.P.	1065 U.S. Return of Partnership Income
19	2003	TDC Investments, L.P.	1065 U.S. Return of Partnership Income
20	2004	TDC Investments, L.P.	1065 U.S. Return of Partnership Income
21	1996	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
22	1997	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
23	1998	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
24	1999	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
25	2000	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
26	2001	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
27	2002	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
28	2003	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
29	2004	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
30	2004	TRC Trading Inc.	IL-1120-ST Small Business Corporation Tax Return
31	1995	TRC I Investments L.P.	1065 - Short Year Initial Return - U.S. Return of Partnership Income
32	1995	TRC I Investments L.P.	IL-1065 Illinois Partnership Return of Income
33	1996	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
34	1997	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
35	1998	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
36	1999	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
37	2000	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
38	2001	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
39	2002	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
40	2003	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
41	2004	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
42	1995	TRC II Investments, L.P.	1065 - Short Year Initial Return - U.S. Return of Partnership Income
43	1995	TRC II Investments, L.P.	IL-1065 Illinois Partnership Return of Income
44	1996	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
45	1997	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
46	1998	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
47	1999	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
48	2000	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
49	2001	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
50	2002	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
51	2003	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
52	2004	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
53	2002	TRC III Investments, L.P.	1065 U.S. Return of Partnership Income
54	2003	TRC III Investments, L.P.	1065 U.S. Return of Partnership Income
55	2004	TRC III Investments, L.P.	1065 U.S. Return of Partnership Income

The foregoing is hereby agreed and stipulated to:

DATED: \_\_\_\_\_, 2010

\_\_\_\_\_  
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\_\_\_\_\_  
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*Counsel for Defendants*

# TAB 6

IN THE ILLINOIS  
INDEPENDENT TAX TRIBUNAL

TYLER R. and TALBOT DEBUTTS )  
CAIN, )  
Petitioners, )  
v. ) No. 15-TT-63  
THE ILLINOIS DEPARTMENT OF )  
REVENUE, )  
Respondent. )

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**RESPONDENT'S 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 Taxpayer's Petition respectfully pleads as follows:

**Allegations Common to All Counts**

1. On July 16, 2012, the Illinois Appellate Court, First District, First Division, ended 6 years of hard-fought litigation between the Petitioners and the Respondent with a final decision that Tyler R. Cain and Talbot Debutts Cain (the "Cains") were, for purposes of the Illinois Income Tax Act ("IITA") [35 ILCS 5/101, *et seq.*] for the tax years 1996 through 2004, not residents of Illinois and were instead residents of Florida and therefore the Cains had overcome the Department of Revenue's (the "Department") Notice of Deficiency and the Department had failed to carry its burden of proof. *Cain v. Hamer*, 2012 IL App (1<sup>st</sup>) 111283 (July 16, 2012).

**See Exhibit A.**

**ANSWER:** The allegations in Paragraph 1 concern tax years prior to the tax year ending December 31, 2007 ("Tax Year at Issue"). Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Further the

Department asserts that the case cited and attached as Exhibit A to the Taxpayers' Petition in Paragraph 1 speaks for itself.

2. During the *Cain v. Hamer* litigation, the Department of Revenue took the sworn deposition of Tyler Cain, and of his accountant, Mr. Robert Jacobson, and the Department retained transcript of these depositions.

**ANSWER:** The allegations in Paragraph 2 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Department admits that its counsel, the Illinois Attorney General, took the depositions of Tyler Cain and Robert Jacobson in a case docketed as 06-L-050986 in the Circuit Court of Cook County. Department denies that Department retained transcripts of the depositions. The Department will make a diligent search for referenced transcripts.

3. Through the 2008 deposition of Tyler Cain, the Department elicited testimony under oath.

**ANSWER:** The allegations in Paragraph 3 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Department admits that its counsel, the Illinois Attorney General, took the deposition of Tyler Cain in docket number 06-L-050986 in the Circuit Court of Cook County.

4. Mr. Cain testified that he was retired at the time of the deposition, December 22, 2008, and during 1995.

**ANSWER:** The allegations in Paragraph 4 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 4, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 4.

5. Mr. Cain testified that his income was from interests, dividends and capital gains, and that, as an example, he had sold "a hundred shares of Abbott Laboratories, not in these

partnerships, in my name.” Mr. Cain had prior in the deposition testified that he had multiple “family partnerships set up over a period of time . . . for the purpose of transferring assets from my name to our children’s name,” and responded affirmatively that “it would be fair to say that’s – they were created mostly for estate planning purposes.”

**ANSWER:** The allegations in Paragraph 5 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 5, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 5.

6. Mr. Cain testified that one of his entities, TRC Trading Inc. is “an S corporation” formed “back when I joined the CBOE [Chicago Board of Options Exchange] . . . in the mid 1970s.”

**ANSWER:** The allegations in Paragraph 6 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 6, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 6.

7. Mr. Cain testified that he did not, since retirement in 1990, perform any personal services for TRC Trading.

**ANSWER:** The allegations in Paragraph 7 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 7, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 7.

8. When asked by the Department if he was “aware that TRC Trading was taking deductions for contributions to your pension plan?” Mr. Cain responded “Yes.”

**ANSWER:** The allegations in Paragraph 8 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is

required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 8, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 8.

9. Mr. Cain testified that since retaining Bob Jacobson as his accountant it was Mr.

Jacobson's decision to not take the pension deduction on the TRC Trading returns.

**ANSWER:** The allegations in Paragraph 9 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 9, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 9.

10. The Department elicited testimony from Mr. Robert Jacobson under oath on February 17, 2009.

**ANSWER:** Department admits that its counsel, the Illinois Attorney General, took the deposition of Robert Jacobson in a case docketed as 06-L-050986 in the Circuit Court of Cook County. However, the information sought at deposition concerned tax years prior to the Tax Year at Issue.

11. Mr. Jacobson testified that "TRC Trading, Inc. was originally formed as an Illinois corporation, and "being a corporation, did not follow the investment partnership rules, so it had no choice but to file in Illinois."

**ANSWER:** The allegations in Paragraph 11 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 11, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 11.

12. Mr. Jacobson testified that TRC Trading Inc. "was originally where he [Mr. Cain] did all of his active trading when he held a seat on one of the exchanges."

**ANSWER:** The allegations in Paragraph 12 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 12, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 12.

13. Mr. Jacobson testified as follows with respect to the salary and defined benefit plan expenses incurred by TRC Trading Inc.:

BY MR. WYNNE:

Q: And to your understanding TRC Trading was the S corp he had when he had a seat on the exchange here?

A: Yes, that's correct.

Q: Now, you also said he was paid a salary by TRC Trading?

A. Correct.

Q: Do you know whether or not that salary continued to be paid?

A. No. The salary stopped.

Q: And why was that, do you know?

A: Well, it appeared that he kept paying the salary because that's what he always did and he thought he had to. He was incurring payroll taxes on it. But he thought he always had to pay himself a salary.

When I told him back in '02, this was before I started working on his personal return, and I believe my conversation was with the other accountant, I said, Why are you continuing to issue payroll? **All he is doing is lending his company money to turn around and pay him. And they realized that they should be putting a stop to it. There was no purpose to be issuing payroll.**

Q: You are familiar with the defined benefit plan Deduction the S corp was taking?

A: Yes.

Q: Do you know if that continued?

A: It continued through '03 or '04. I believe it was '04.

Q: Do you know the reasons why it stopped?

A: Yes. I consulted with him, and I don't know whether the prior accountant just left or whether I was working with him on it. **There was no reason to keep that liability going. There was no business going on anymore,** that it should be closed, and they closed it. (Emphasis added).

**ANSWER:** The allegations in Paragraph 13 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 13, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 13.

14. With respect to the trading activities of TRC Trading after Mr. Cain's retirement, Mr. Jacobson's sworn testimony was that:

BY MR. WYNNE

Q: When you reviewed the returns of TRC Trading Inc. did you get a sense of the trading activity that the entity conducted?

A: Yes. It was minimal amounts of trading. For example, there may be only, from '99, when I looked through the returns, from '99 through 2004, I think the highest number of sales of stock was ten for the whole year.

Before that I didn't have a copy of the Schedule D to tell you, but there was not active trading going on.

Q: **And to your knowledge TRC Trading has never traded for anybody other than Mr. Cain's accounts?**

A: **That's correct.** (Emphasis added)

**ANSWER:** The allegations in Paragraph 14 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 14, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 14.

15. With respect to his working interaction with Mr. Cain, Mr. Jacobson testified as follows:

BY MR. WYNNE

Q: In your dealings with Mr. Cain, how does he normally contact you?

A: Phone and e-mail.

Q: Is that communication exclusively from Florida?

A: No. He can call me or phone me or e-mail from anywhere in the world.

Q: Do you know him to travel frequently?

A: Yes. He travels quite extensively.

**ANSWER:** The allegations in Paragraph 15 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Petitioner did not attach the transcript of testimony to which it refers in Paragraph 15, or otherwise identify the transcript by date, or provide a reference to the page and line number of the transcript for the testimony alleged. Therefore, the Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 15.

16. In addition to the sworn testimony of Mr. Cain and of Mr. Jacobson which the Department obtained during the *Cain v. Hamer* proceedings, upon the close of discovery the Department also entered into a Stipulation of Facts with the Cains.

**ANSWER:** Department admits that Department, through its attorney, entered into a stipulation of facts regarding the years 1996 through 2004 in docket number 06-L-050986 in the Circuit Court of Cook County.

17. In the Stipulation of Factual Matters in the *Cain v. Hamer* litigation, which was relied on by the parties and the Circuit and Appellate courts, the Department and the Cains “agreed and stipulated” to the following facts (emphasis added):

58. During the Relevant Period, Mr. Cain did not perform any personal services for TRC Trading, Inc.

59. TRC Trading, Inc., an S corporation under the federal Internal Revenue Code, had no paying clients at any time during the Relevant Period.

60. During the Relevant Period, TRC Trading, Inc. never offered or provided services to the public.

- ...
64. Mr. Jacobson recommended that Mr. Cain's pension plan be terminated in 2004 when he began preparing TRC Trading, Inc.'s tax returns, since there was no business activity taking place and there is no reason to have such liability. TRC Trading, Inc. did not file any amended federal income tax returns for any tax years in the Relevant Period.

**ANSWER:** The allegations in Paragraph 17 concern tax years prior to the Tax Year at Issue. Therefore, the facts alleged are not material allegations of fact, and therefore, no answer is required pursuant to Rule 310(b)(2). Department admits that Department, through its attorney, entered into a stipulation of facts regarding the years 1996 through 2004 in docket number 06-L-050986 in the Circuit Court of Cook County.

18. The Appellate Court's discussion of the many facts pertaining to the tax residency issue, taking into account all facts of record, commented that "Although plaintiffs owned companies during the relevant period, they had limited involvement in those companies." *Cain v. Hamer*, 2102 IL App (1<sup>st</sup>) 112833, ¶ 9.

**ANSWER:** Department admits the existence force and effect of the case law cited in Paragraph 18. That case law speaks for itself.

19. Section 1501(a)(1) of the IITA, in pertinent part, provides that "The term "business income" means all income that may be treated as apportionable business income under the Constitution of the United States." 35 ILCS 5/1501(a)(1).

**ANSWER:** Department admits the existence force and effect of the statute cited in Paragraph 19. That law speaks for itself.

20. Section 1501(a)(13) of the IITA provides that "The term "nonbusiness income" means all income other than business income or compensation." 35 ILCS 5/1501(a)(13).

**ANSWER:** Department admits the existence force and effect of the statute cited in Paragraph 20. That law speaks for itself.

21. Section 301(c)(2) of the IITA, in pertinent part provides as follows:

**Sec. 301. General Rule.**

(a) Residents. . . .

(b) Part-year residents. . . .

(c) Other persons.

(1) In general. Any item of income or deduction which was taken into account in the computation of base income for the taxable year by any person other than a resident and which is referred to in Section 302, 303 or 304 (relating to compensation, nonbusiness income and business income, respectively) shall be allocated to this State only to the extent provided by such section.

(2) Unspecified items. Any item of income or deduction which was taken into account in the computation of base income for the taxable year by any person other than a resident and which is not otherwise specifically allocated or apportioned pursuant to Section 302, 303 or 304 (including, without limitation, interest, dividends, items of income taken into account under the provisions of Sections 401 through 425 of the Internal Revenue Code, and benefit payments received by a beneficiary of a supplemental unemployment benefit trust which is referred to in Section 501(c)(17) of the Internal Revenue Code):

(A) in the case of an individual, trust, or estate, shall not be allocated to this State; and

(B) in the case of a corporation or a partnership, shall be allocated to this State if the taxpayer had its commercial domicile in this State at the time such item was paid, incurred or accrued.

**ANSWER:** Department admits the existence force and effect of the statute cited in Paragraph 21. That law speaks for itself.

22. With respect to nonbusiness income, section 303 of the IITA, in pertinent part, provides as follows:

Sec. 303. (a) In general. Any item of capital gain or loss . . . to the extent such item constitutes nonbusiness income, together with any item of deduction directly allocable thereto, shall be allocated by any person other than a resident as provided in this Section.

(b) Capital gains and losses.

....

(3) Intangibles. Capital gains and losses from sales or exchanges of intangible personal property are allocable to this State if the taxpayer had its commercial domicile in this State at the time of such sale or exchange.

**ANSWER:** Department admits the existence force and effect of the statute cited in Paragraph 22. That law speaks for itself.

23. Section 1501(a)(2) of the IITA provides that "The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed." 35 ILCS 5/1501(a)(2).

**ANSWER:** Department admits the existence force and effect of the statute cited in Paragraph 23. That law speaks for itself.

24. Section 1501(a)(20) limits the term "resident" to individuals, trusts and estates. 35 ILCS 5/1501(a)(20).

**ANSWER:** Department admits the existence force and effect of the statute cited in Paragraph 24. That law speaks for itself.

25. All material facts established through the testimony of Mr. Cain and Mr. Jacobson, and through the Stipulation of Factual Matters, remained substantially unchanged with respect to the 2007 Illinois income tax year.

**ANSWER:** Department denies the factual allegations in paragraph 25.

26. At some point during 2007, Mr. Cain sold stock in Abbott Laboratories which Mr. Cain had contributed as capital to TRC Trading, Inc. upon its formation, the title of which remained registered to Tyler R. Cain, resulting in capital gain income to TRC Trading, Inc.

**ANSWER:** Department admits the factual allegations in paragraph 26.

27. In 2007, TRC Trading, Inc. distributed to Tyler R. Cain the proceeds from the 2007 sale of stock.

**ANSWER:** Department admits the factual allegations in paragraph 27.

28. TRC Trading Inc. filed an original return reporting the capital gain on the sale of stock as business income on the IL 1120-ST for TYE 12/31/2007.

**ANSWER:** Department admits the factual allegations in paragraph 28.

29. More than three years after the filing of the original IL 112-ST return, TRC Trading Inc. filed an amended return reporting the capital gain on the sale of stock as nonbusiness income, but the amended return did not seek a refund of the resulting overpayment of tax to Illinois.

**ANSWER:** Department admits the factual allegations in paragraph 29.

30. After the Department lost the *Cain v. Hamer* case after a six year legal battle during which, sadly, Talbot D. Cain deceased, on October 10, 2013 the Department issued a Notice of Audit Initiation for the 2007 tax year to TRC Trading, Inc.

**ANSWER:** Department admits the factual allegations in paragraph 30.

31. Notwithstanding the above alleged deposition testimony of Mr. Cain and Mr. Jacobson and the above alleged Stipulation of Factual Matters in the *Cain v. Hamer* litigation, just six days after the Notice of Audit Initiation was sent to TRC Trading, Inc. on October 16, 2013, the Department issued to Tyler R. Cain and Talbot D. Cain a Notice of Proposed Deficiency for the 2007 tax year proposing to assess tax of \$64,304, and penalty of \$19,291, plus interest, for the

2007 tax year because the amended return “is out of statute and the treatment of income as ‘Nonbusiness’ income is improper.”

**ANSWER:** Department admits the factual allegations in paragraph 31.

**32.** Mr. Cain, through his counsel, advised the Department on October 29, 2013, as follows:

... We believe that if the Department issues a Notice of Deficiency the Department will be taking a position contrary to judicially established facts that it is collaterally estopped from litigating yet again, without reasonable cause to do so (*i.e.*, the development of any new information), and it will expose itself to a claim for attorney fees under Section 10-55(a) of the Administrative Procedure Act and Section 7 of the Taxpayers’ Bill of Rights Act if we have to protest and defeat this position.

**ANSWER:** Department admits the factual allegations in paragraph 32.

**33.** On February 5, 2015, the Department issued a Notice of Deficiency to the Cains assessing a personal income tax deficiency for the 2007 Illinois income tax year of \$118,761.00 (tax, penalty and interest) because, as the Department’s Informal Conference Board concluded in November 26, 2014, “Tyler R. Cain’s distribution from TRC Trading Inc. is business income and should be sourced to Illinois.” (Emphasis added). See **Exhibit B** (Notice of Deficiency) and **Exhibit C** (Informal Conference Board, Action Decision).

**ANSWER:** Department admits the factual allegations in paragraph 33.

### COUNT I

**The Department is collaterally estopped from establishing, contrary to the sworn testimony and the Stipulation of Factual Matters in the *Cain v. Hamer* case, that TRC Trading Inc. had a commercial domicile for purposes of IITA section 1501(a)(2). Therefore the NOD cannot establish the *prima facie* case under IITA section 904(c) that the 2007 distribution by TRC Trading Inc. of capital gain income to Mr. Cain was of Illinois source business income.**

34. Plaintiff repeats and realleges the allegations in paragraphs 1 through 33 hereof as though fully set forth herein.

**ANSWER:** Department realleges and incorporates herein its Answers to paragraphs 1 through 33.

35. The deposition testimony of Mr. Cain and of Mr. Jacobson, and the Department's Stipulation of Factual Matters in the *Cain v. Hamer* litigation established conclusively that TRC Trading, Inc. was not engaged in a trade or business carried during 1996 through 2004.

**ANSWER:** Paragraph 35 contains a legal conclusion, not a material allegation of fact. Additionally, the allegations in Paragraph 35 concern tax years prior to the Tax Year at Issue. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2).

36. Because TRC Trading Inc. is a corporation it is not a "resident" for purposes of sections 301(a) and 1501(a)(20) of the IITA.

**ANSWER:** Paragraph 36 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2).

37. Because TRC Trading Inc. had no trade or business during 1996 through 2004 it had no "commercial domicile" within the meaning of that term in section 301(c)(2).

**ANSWER:** Paragraph 37 contains a legal conclusion, not a material allegation of fact. Additionally, the allegations in Paragraph 37 concern tax years prior to the Tax Year at Issue. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2).

**38.** The Department is collaterally estopped from asserting that capital gain income earned by TRC Trading, Inc. in 2007 arose from an active trade or business engaged in by TRC Trading, Inc.

**ANSWER:** Paragraph 38 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2). Department denies the allegations in paragraph 38.

**39.** Because TRC Trading Inc. did not have a commercial domicile in this, or any other, State, the capital gain of TRC Trading, Inc. cannot be allocated to this State under IITA Section 303(b)(3).

**ANSWER:** Paragraph 39 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2). Department denies the allegations in paragraph 39.

**40.** Because TRC Trading Inc. did not have a commercial domicile in this, or any other, State, the capital gain of TRC Trading, Inc. cannot be allocated to this State under IITA section 301(c)(2)(B).

**ANSWER:** Paragraph 40 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2). Department denies the allegations in paragraph 40.

**41.** Because the 2007 capital gain income of TRC Trading Inc. could not be allocated to this State under section 303(b)(3) nor under section 301(b)(3), its distribution of the income to Mr. Cain was not a distribution of Illinois source income.

**ANSWER:** Paragraph 41 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2). Department denies the allegations in paragraph 41.

**42.** Having been adjudged by the Illinois courts to be a resident of Florida, and a nonresident of Illinois, in 2007 Mr. Cain was only subject to tax under the IITA with respect to distributions of Illinois source income made to him by TRC Trading, Inc.

**ANSWER:** Paragraph 42 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2). Department denies the allegations in paragraph 42.

**WHEREFORE,** Department prays that the Tax Tribunal enter an order declaring that: (1) Petitioner cannot establish a case of collateral estoppels because the Notice of Deficiency at issue concerns tax year ending December 31, 2007; and (2) that the NOD establishes the statutory *prima facie* case under IITA section 904(c) that that the 2007 distribution of capital gain income to Mr. Cain from TRC Trading, Inc. was a distribution of Illinois source business income.

## COUNT II

**In the alternative, either as business income, or as nonbusiness income, TRC Trading Inc.'s distribution of income to Mr. Cain was properly allocated to Mr. Cain's state of residence, Florida.**

**43.** Plaintiff repeats and realleges paragraphs 1 through 33 hereof as though fully set forth herein.

**ANSWER:** Department realleges and incorporates herein its Answers to paragraphs 1 through 33.

44. The Department's IITA Regulations, in pertinent part concerning Special Apportionment, provides as follows:

**§ 100.3380. Special Rules (IITA Section 304)**

(c) Sales Factor. The following special rules are established in respect to the Sales Factor in IITA Section 304(a)(3):

4) Where business income from intangible property cannot readily be attributed to any income producing activity of the person, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor.

86 Ill. Admin. Code § 100.3380(c)(4).

**ANSWER:** Department admits the existence force and effect of the regulation cited in Paragraph 44. That law speaks for itself.

45. Even if the capital gain from the sale of stock held by TRC Trading is presumed by the IDOR to have generated business income, there was no income producing business activity of TRC Trading Inc. identified by the Department to which the capital gain could be readily attributed to in order to allocate the income as Illinois source income of TRC Trading, Inc.

**ANSWER:** Paragraph 45 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2). Department denies the allegations in paragraph 45.

46. The Department's IITA regulation addressing business and nonbusiness income, 86 Ill. Admin. Code. § 100.3010, provides no guidance for sourcing nonbusiness capital gain income from the disposition of *intangible* assets, and refers to IITA section 301(c)(2) for "rules for the allocation by these persons [persons other than residents] of unspecified items of nonbusiness income."

**ANSWER:** Department admits the existence force and effect of the regulation cited in Paragraph 46. That law speaks for itself.

47. Under IITA section 301(c)(2) unspecified items of nonbusiness income “in the case of a corporation” can only be sourced to Illinois if the corporation had its commercial domicile in Illinois.

**ANSWER:** Department admits the existence force and effect of the statute cited in Paragraph 47. That law speaks for itself.

48. TRC Trading, Inc. had a legal domicile in Illinois but no commercial domicile within the meaning of IITA section 1501(a)(2) and 86 Ill. Admin. Code § 100.3210, and thus the capital gain could not be allocated to Illinois under IITA section 301(c)(2)(B)

**ANSWER:** Paragraph 48 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2). Department denies the allegations in paragraph 48.

49. Under IITA section 301(c)(2)(A), unspecified items of nonbusiness income “in the case of an individual, trust, or estate, shall not be allocated to this State.”

**ANSWER:** Department admits the existence force and effect of the statute cited in Paragraph 49. That law speaks for itself.

50. Mr. Cain was adjudged to be a nonresident of Illinois, and thus the distribution of capital gain income from TRC Trading, Inc. could not be allocated to Illinois under IITA section 301(c)(2)(A).

**ANSWER:** Paragraph 50 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2). Department denies the allegations in paragraph 50.

**WHEREFORE,** Defendant prays that the Tax Tribunal enter an order declaring that the 2007 capital gain distributed to Mr. Cain by TRC Trading Inc. is allocable to Illinois as Illinois source income under the IITA either as business or nonbusiness income.

### COUNT III

**The Department's NOD, contrary to the testimony and the Stipulation of Factual Matters in *Cain v. Hamer* and without reasonable cause, makes the untrue assertion that Mr. Cain received a distribution of Illinois source business income from TRC Trading Inc. Therefore, the Department has subjected itself to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred by Mr. Cain in defense of the action initiated by the NOD.**

51. Plaintiff repeats and realleges paragraphs 1 through 33 hereof as though fully set forth herein.

**ANSWER:** Department realleges and incorporates herein its Answers to paragraphs 1 through 33 as if fully set forth here.

52. Section 10-55 of the Administrative Procedure Act ("APA"), in pertinent part, provides as follows:

Sec. 10-55. Expenses and attorney's fees.

(a) In any contested case initiated by any agency that does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 2-611 of the Civil Practice Law, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making the allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated. A claimant may not recover litigation expenses when the parties have executed a settlement agreement that, while not stipulating liability or violation, requires the claimant to take correction action or pay a monetary sum.

5 ILCS 100/10-55(a).

**ANSWER:** Department admits the existence force and effect of the statute cited in Paragraph 52. That law speaks for itself.

53. The Department was warned by Mr. Cain's counsel, in writing, prior to issuing the NOD that the liability the Department was proposing would be contrary to established, adjudicated facts, without reasonable cause to do so, and would expose itself to potential liability for costs and fees under the APA.

**ANSWER:** Paragraph 53 contains an allegation of fact that is immaterial to the issues to be decided by this Tribunal. Department admits that Petitioner sent Department a letter threatening to request attorneys' fees if the Department issued its Notice of Deficiency.

54. Ignoring the testimony and Stipulation of Factual Matters in *Cain v. Hamer*, ignoring the submissions by Mr. Cain's accountant and Mr. Cain's counsel that there was no reasonable basis for the proposed assessment of liability, and ignoring Mr. Cain's counsels admonition that the Department may trigger liability for reasonable expenses and fees Mr. Cain would incur to defend against a proposed assessment, the Department issued the NOD that is the subject of this contested case proceeding.

**ANSWER:** Department admits that it issued the Notice of Deficiency for tax year ending December 31; 2007. Tax year 2007 was not a year at issue in the *Cain v. Hamer* case.

55. The General Assembly has failed to amend Section 10-55 of the APA to reflect that Civil Practice Law has been replaced by the Illinois Code of Civil Procedure, and to reflect that Supreme Court Rule 137 [Ill. S. Ct. R. 137] preempted former Section 2-611 of the Civil Practice Law. There is currently no Section 2-611 of the Code of Civil Procedure [735 ILCS 5/Art I, *et seq.*]. The Tax Tribunal therefore does not have jurisdiction to make an award of expenses under

Section 2-611 of the Civil Practice Law, and thus Section 10-55 of the APA is applicable to this contested case proceeding.

**ANSWER:** Paragraph 55 contains a legal conclusion, not a material allegation of fact. Therefore, no answer is required pursuant to Tribunal Rule 310(b)(2). Department denies the allegations in paragraph 55.

**WHEREFORE**, Department prays that the Tax Tribunal enter an Order declaring that because the Petitioner failed to cooperate with the Department's audit process, the Department's issuance of the NOD was reasonable, and the NOD is *prima facie* correct.

#### COUNT IV

**In issuing an NOD without reasonable cause to take a position contrary to testimony and a Stipulation of Factual Matters in *Cain v. Hamer*, even after being advised that in so doing it would expose itself to an award for reasonable expenses and attorney's fees, the Department acted with intentional or reckless disregard of tax laws and regulations, subjecting itself to suit for damages under Section 5 of the Taxpayers' Bill of Rights.**

56. Plaintiff repeats and realleges paragraphs 1 through 33 hereof as though fully set forth herein.

**ANSWER:** Department realleges and incorporates herein its Answers to paragraphs 1 through 33 as if fully set forth here.

57. The Taxpayers' Bill of Rights provides as follows:

Sec. 5. Taxpayer's suits. Taxpayers have the right to sue the Department of Revenue if such Department intentionally or recklessly disregards tax laws or regulations in collecting taxes. The maximum recovery for damages in such a suit shall be \$100,000. If a taxpayer's suit is determined by the court to be frivolous the court may impose a penalty on the taxpayer not to exceed \$10,000 to be collected as a tax.

20 ILCS 2520/5.

**ANSWER:** Department admits the existence, force, and effect of the statute quoted in paragraph 57. That statute speaks for itself.

58. The Department *deliberately chose* to proceed to issue a NOD against Mr. and Mrs. Cain after having been specifically cautioned that proceeding to assessment for the 2007 tax year on a basis factually contrary to the testimony and stipulated facts in *Cain v. Hamer* would expose the Department to potential damages under the Taxpayers' Bill of Rights. The Department *deliberately chose* to proceed to issue a NOD even though it had developed no new facts regarding the 2007 tax year (during which the Cains were locked in litigation with the Department) from those it had uncovered after more than 6 years of expensive litigation with the Cains in a failed effort to assess liability against them as Illinois residents under the IITA for the 1996 through 2004 tax years, which involved invasive and burdensome discovery of every aspect of Tyler and Talbot Cain's lives and even an illegal procurement of their credit report.

**ANSWER:** Department denies the allegations in paragraph 58.

59. During the course of the aforementioned proceedings in *Cain v. Hamer* the Department was advised by Mr. Cain's counsel in the litigation that Talbot D. Cain had died, before having received the full disbursement of funds due under the State Officers and Employees Money Disposition Act in *Cain v. Hamer*. Nevertheless the Department *deliberately chose* to include Talbot Cain in the NOD.

**ANSWER:** Department included Mrs. Talbot D. Cain on the NOD because Petitioners filed a joint income tax return for the tax year ending December 31, 2007.

60. The assessment of liability for the 2007 tax year against Tyler and Talbot Cain is the result of intentional or reckless disregard of the tax laws and regulations, for which Tyler Cain is entitled to the maximum amount of damages under the Taxpayers' Bill of Rights.

**ANSWER:** Department denies the allegations in paragraph 60.

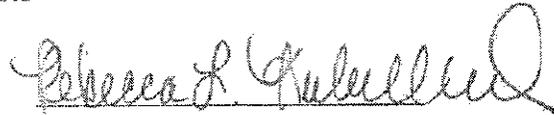
**WHEREFORE,** Plaintiff prays that the Tax Tribunal enter an order holding that the Department acted reasonably and denying any award of damages to Tyler Cain pursuant to the Taxpayers' Bill of Rights.

Respectfully submitted,

Illinois Department of Revenue

By: LISA MADIGAN, Attorney General, State of Illinois

By:



Rebecca L. Kulekowskis

Special Assistant Attorney General

Date: June 2, 2015

Rebecca L. Kulekowskis

Special Assistant Attorney General

Phone: (312) 814-3318

[Rebecca.Kulekowskis@illinois.gov](mailto:Rebecca.Kulekowskis@illinois.gov)

Illinois Department of Revenue

100 West Randolph St., 7-900

Chicago, IL 60601

Fax: (312) 814-4344

STATE OF ILLINOIS        )  
                                      ) SS  
COUNTY OF COOK         )

TYLER R. and TALBOT DEBUTTS CAIN

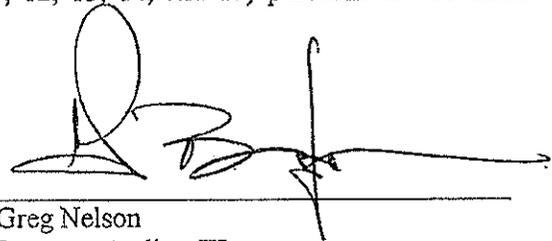
v.

ILLINOIS DEPARTMENT OF REVENUE

DOCKET NO. 15-TT-63

**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 Respondent’s Answers to 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 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, and 15) pursuant to 735 ILCS 5/2-610(b), which he verily believes to be true.



\_\_\_\_\_  
Greg Nelson  
Revenue Auditor III  
Illinois Department of Revenue

# TAB 7

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - LAW DIVISION  
TAX AND MISCELLANEOUS REMEDIES SECTION

Tyler and Talbot Cain,

Plaintiffs,

v.

Brian Hamer, in his official capacity as  
Director, Illinois Department of Revenue; the  
Illinois Department of Revenue; and, Alexis  
Giannoulis, in his official capacity as State  
Treasurer of the State of Illinois,

Defendants.

No.: 06 L 050986

Judge Elmer Tolmaire

STIPULATION OF FACTUAL MATTERS

The Plaintiffs, Tyler and Talbot Cain (the "Cains"), and the Defendants, the Illinois Department of Revenue (the "Department"), Brian Hamer, as Director of the Department, and Alexis Giannoulis, as State Treasurer (collectively all as the "Defendants"), agree and stipulate to the following factual matters:

1. The relevant tax periods are the years ending December 31, 1996 through December 31, 2004 (the "Relevant Period").
2. Tyler Cain was born and raised in Illinois. He graduated from New Trier High School in Winnetka and attended several colleges outside Illinois before returning to Illinois and graduating from Lake Forest College in Lake Forest, Illinois with a bachelor of arts degree.
3. Talbot Cain was born in Norfolk Virginia and graduated from high school in Washington, D.C. She graduated from Mary Washington College in Fredericksburg, Virginia before moving to New York to work for Conde Nast Publication for three years.

4. More than 46 years ago, the Cains were married in Illinois and spent their honeymoon in Jupiter Island, in Martin County, Florida, and then returned to Illinois to work, live, and raise a family.
5. Until 1990, Mr. Cain was self-employed, as a trader owning a seat in the Chicago Board of Options Exchange.
6. On December 10, 1990, Mr. Cain sold his seat at the CBOE for [REDACTED]

Real Property Contacts

**FLORIDA**

7. The Cains' house is located at [REDACTED] Florida.
8. Since 1995, the Cains have claimed a homestead exemption on their house at [REDACTED] Florida.
9. The Cains purchased the land on which they built their house located at [REDACTED] in 1987.
10. The construction of the Cains' house, located at [REDACTED] Florida, was completed in 1990.
11. The Cains also purchased a three-bedroom, 2.5 baths, 2 car garage townhouse at [REDACTED] Florida, for [REDACTED] on September 28, 2005, which is available for their children and families to use.
12. According to the Martin County, Florida, assessor, the approximate market value of the Cains' house located at [REDACTED] Florida is [REDACTED].
13. According to the Martin County, Florida, assessor, there are two dwellings on parcel ID No. 35-38-42-015-000-00010-9, located at [REDACTED] Florida, the main house with an approximate square footage of 6,322 and a guesthouse with an approximate square footage of 1,004.

ILLINOIS

14. Before 1995, the Cain's long-time house and residence was at [REDACTED] Illinois, where they raised their family.
15. According to the Lake County, Illinois, assessor, the approximate market value of the Cains' house located at [REDACTED] Illinois, is [REDACTED]
16. According to the Lake County, Illinois assessor, the approximate square footage of the Cains' house located at [REDACTED] Illinois is 6,592.
17. Illinois homestead exemptions, once granted, continue from year to year without reapplication or renewal.
18. The Cains contacted the Lake County assessor and discontinued the homestead exemption in Illinois several years ago, but after the Relevant Period, having received a homestead exemption after 1995.
19. After 1995, in an effort to downsize from their house at [REDACTED] [REDACTED] the Cains purchased vacant property located at 333 North Green Bay Road in Lake Forest, Illinois, intending at the time to construct a house using the proceeds from the sale of their house at [REDACTED] Illinois.
20. On the Transfer Declaration for the property located at [REDACTED] Illinois from the purchase of the property by the Cains, the form was marked to indicate that this property was not the Cain's principle residence.
21. After purchasing the above property, the Cains retained the services of an Illinois architect, Thomas Beeby, to design the house and submit the proposed design to the Lake Forest Historic Preservation Commission for the necessary approval. Minutes of a meeting between the Cains and their architect, prepared by the architect, reflecting their discussion of plans for the proposed house at [REDACTED] are attached as an Exhibit 1.
22. The Cains ultimately abandoned their plan to downsize to a house at [REDACTED] [REDACTED] as the costs of construction became too expensive.

23. In August 2005, architect Thomas Beeby, on behalf of the Cains, requested a Certificate of Appropriateness for a proposed addition to the Cains' house at [REDACTED]. A copy of the minutes from the Commission's meeting is attached hereto as Exhibit 2.

Contacts Other Than Real Estate

24. The Cains executed their Declaration of Domicile in Florida on November 13, 1995, which was recorded in Martin County, Florida, on November 20, 1995. A true and accurate copy of which is attached hereto as Exhibit 3.
25. Mr. Cain has a Permanent Resident Identification Card issued by the State of Florida on November 13, 1995, which is current and was valid for the entire Relevant Period. A true and accurate copy of which is attached hereto as Exhibit 4.
26. Mrs. Cain has a Permanent Resident Identification Card issued by the State of Florida on March 11, 1996, which is current and was valid for the Relevant Period beginning on March 11, 1996. A true and accurate copy of which is attached hereto as Exhibit 5.
27. During the Relevant Period, Mr. Cain's personal use cellular phone number has a Florida area code ("772").
28. During the Relevant Period, the Cains subscribed to the following publications, which are delivered to their Florida residence:
- A. Palm Beach Post;
  - B. New York Times;
  - C. Investors Business Daily; and
  - D. Wall Street Journal.
29. During the Relevant Period, the Cains established patient relationships with the following doctors located in Florida:
- A. Dr. Mark Groeke, Internist, since 2003;
  - B. Dr. Peter Lascheid, Dentist, during the entire Relevant Period;
  - C. Dr. Warren Zwecker, Dermatologist, during the entire Relevant Period; and

- D. Dr. Elise Hillman, Dermatologist, during the entire Relevant Period.
30. During the Relevant Period, the Cains retained patient relationships with the following doctors in Illinois:
- A. Dr. Jerry Osher, Internist;
  - B. Dr. Lloyd Sigmund, Dentist
  - C. Dr. Julia Marshall, Dermatologist
31. The Cains estate plans relied upon a Florida attorney, Robert Chapin, for administration and implementation.
32. During the Relevant Period, the Cains employed the services of various legal advisors in Florida and Illinois.
33. During the Relevant Period, the Cains employed the services of tax preparers in Illinois to prepare their personal and partnership / S Corporation federal income tax returns.
34. During the Relevant Period, Mrs. Cain was a member of the Jupiter Island Bridge Club in Jupiter Island, Florida, and actively participated in bridge tournaments.
35. According to the Cains' American Express statements for the period from July 12, 2001 through August 19, 2004, 73% of their expenditures were made outside of Illinois, and they were making those expenditures outside of Illinois 61% of the time. The Cains have two pieces of art work, among others, in their Florida residence, one valued between [REDACTED] and [REDACTED] and the other valued in excess of [REDACTED]. The combined value of these two paintings is greater than the total value of all art work owned by the Cains located in Illinois.
36. The Cains purchased burial plots in Martin County, Florida.

Voter Registration, Voting Licenses, Identification and Jury Duty

37. During the Relevant Period, Mr. Cain had a Concealed Weapon or Firearm License issued by the State of Florida. A true and accurate copy of which is attached hereto as Exhibit 4.
38. During the Relevant Period, Mr. Cain had a Driver's License issued by the State of Florida. A true and accurate copy of which is attached hereto as Exhibit 4.
39. During the Relevant Period, the Cains were both registered to vote in Florida.
40. During the Relevant Period, Mrs. Cain had a Driver's License issued by the State of Florida. A true and accurate copy of which is attached hereto as Exhibit 5.

Public records from the Martin County, Florida Supervisor of Elections show the following identical voting history for both Tyler and Talbot Cain:

Year	In Person / Absentee
1996	Absentee
1998	Absentee
1999	In Person
2000	In Person
2001	In Person
2002	Absentee

41. Mr. Cain was summoned for jury duty in Florida during the winter of 2000. He served and was dismissed.
42. During the Relevant Period, Mr. Cain was summoned a second time for jury duty in Florida, but was dismissed because he had prostate cancer.
43. Mrs. Cain was summoned for jury duty in Florida during the summer of 2001, but was unable to serve.

44. Mrs. Cain was summoned for jury duty in Florida during the winter of 2002. She reported for duty and was dismissed.
45. Neither Mr. nor Mrs. Cain was called for or served jury duty in Illinois during the Relevant Period.
46. According to public records, during the relevant period, Mr. Cain made the following political contributions:

Candidate	Office	Amount
		500
		2,000
		1,000
		250
		500
		1,000
		1,000

47. Donations made to national and non-Illinois candidates exceeded the amount made to Illinois candidates.

Automobiles

48. During the Relevant Period, the Cains had no automobiles registered in Illinois.

Physical Presence in Florida, Illinois and Elsewhere

49. The Cains were physically present in Florida, Illinois and outside of both Florida and Illinois approximately the following number of days each year in the Relevant Period:

Year	Days in Florida	Days in Illinois	Days Elsewhere
1996	159	161	45
1997	165	159	41
1998	171	167	27
1999	168	171	26
2000	171	167	27
2001	175	167	23
2002	175	164	26
2003	164	177	24
2004	170	171	24
2005	182	162	21
<b>Totals</b>	<b>1,700</b>	<b>1,666</b>	<b>284</b>

The Cains Spending at Private Clubs

50. The Cains spent the following amounts at their private clubs in Florida, Illinois, New York and Pennsylvania from 2003 through 2007:

Illinois Clubs	2003	2004	2005	2006	2007	Totals
Shoreacres	\$16,945	\$11,327	\$14,929	\$8,938	\$12,182	\$64,322
Opwentsia Club	\$17,420	\$18,174	\$16,944	\$27,673	\$18,728	\$98,939
The Racquet Club of Chicago	\$3,430	\$5,289	\$2,648	\$6,243	\$1,580	\$19,190
Old Elm Club	\$11,942	\$6,390	\$18,997	\$11,733	\$4,455	\$53,517
<b>Illinois Totals</b>	<b>\$49,737</b>	<b>\$41,180</b>	<b>\$53,518</b>	<b>\$54,587</b>	<b>\$36,945</b>	<b>\$235,967</b>

Florida Clubs	2003	2004	2005	2006	2007	Totals
Seminole Golf Club	\$10,039	\$10,595	\$10,119	\$10,209	\$10,595	\$51,557
Jupiter Island Group, Inc.	\$41,104	\$68,392	\$54,359	\$56,893	\$55,783	\$276,531
Hobe Sound Yacht Club	\$10,010	\$11,551	\$6,278	\$7,676	\$7,856	\$43,371
The Everglades Club, Inc.	\$9,768	\$10,409	\$9,693	\$10,758	\$10,453	\$51,081
<b>Florida Totals</b>	<b>\$70,921</b>	<b>\$100,947</b>	<b>\$80,449</b>	<b>\$85,536</b>	<b>\$84,687</b>	<b>\$422,540</b>

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New York Clubs	2003	2004	2005	2006	2007	Totals
The Brook Club	\$1,977	\$1,854	\$1,872	\$2,013	\$1,887	\$9,603
Colony Club	\$2,016	\$3,244	\$2,216	\$2,227	\$3,592	\$13,295
<b>New York Totals</b>	<b>\$3,993</b>	<b>\$5,098</b>	<b>\$4,088</b>	<b>\$4,240</b>	<b>\$5,479</b>	<b>\$22,898</b>

Pennsylvania Club	2003	2004	2005	2006	2007	Totals
Rolling Rock Club	\$1,360	\$1,324	\$1,741	\$1,632	\$6,349	\$12,406
<b>Pennsylvania Totals</b>	<b>\$1,360</b>	<b>\$1,324</b>	<b>\$1,741</b>	<b>\$1,632</b>	<b>\$6,349</b>	<b>\$12,406</b>

The Cains Actively Participated in Organizations In Florida and Illinois

51. Mr. Cain was a member or served on the board of directors/governors/trustees or on a committee of the following organizations:

Organization	Location	Position Held	Time Period
Jupiter Medical Center	Jupiter, FL	Board of Directors and Planning Committee	1995 – 1999
Jupiter Medical Center Foundation	Jupiter, FL	Board of Directors	2005 – present
Jupiter Island Medical Clinic	Hobe Sound, FL	Board of Directors	2007 – present
Jupiter Island Club	Hobe Sound, FL	Member, Buyout Committee (1993-2002) and Board of Governors (1993-2002)	1988 – present
Hobe Sound Yacht Club	Hobe Sound, FL	Member	1994 – present
The Everglades Club	Palm Beach, FL	Member	1996 – present
The Four Arts Club	Palm Beach, FL	Member	2003 – present
Seminole Golf Club	Juno Beach, FL	Member	1989 – present
Onwentsia Club	Lake Forest, IL	Member	1972 – present
Shoreacres Club	Lake Bluff, IL	Member, Board of Governors (2000-2005)	1985 – present
The Racquet Club	Chicago, IL	Member	1975 – present
Old Elm Club	Highwood, IL	Member	1985 – present
Lake Forest College	Lake Forest, IL	Board of Trustees	2006 – present

52. Mrs. Cain was a member or served on the board of directors/governors/trustees or on a committee of the following organizations:

Organization	Location	Position Held	Time Period
Jupiter Island Club	Hobe Sound, FL	Member	1988 – present
Hobe Sound Yacht Club	Hobe Sound, FL	Member and Board of Governors (2000-2004, 2006)	1994 – present
The Everglades Club	Palm Beach, FL	Member	1996 – present
The Four Arts Club	Palm Beach, FL	Member	2003 – present
Seminole Golf Club	Juno Beach, FL	Member	1989 – present
Onwentsia Club	Lake Forest, IL	Member	1972 – present
Shoreacres Club	Lake Bluff, IL	Member	1985 – present
The Racquet Club	Chicago, IL	Member	1975 – present
Old Elm Club	Highwood, IL	Member	1985 – present

53. The Cains attended most regularly scheduled meetings (ten per year) at the Jupiter Island Club, located in Hobe Sound, FL, since 1999 through the remainder of the Relevant Period.
54. Mr. Cain attended most regularly scheduled Board of Governors meetings (eight per year) at the Shoreacres Club, located in Lake Bluff, IL, during the Relevant Period, except for meetings during November through May.
55. Mr. Cain attended most regularly scheduled Board of Trustees meetings (four per year) at Lake Forest College, located in Lake Forest, IL, during the Relevant Period

The Cains' Investment Entities

56. The majority of Mr. Cain's income during the Relevant Period was derived from dividends, interest and capital gains.
57. During the Relevant Period, the Cains used an Illinois address on their partnership and s corporation federal income tax returns.
58. During the Relevant Period, Mr. Cain did not perform any personal services for TRC Trading, Inc.

59. TRC Trading, Inc., an S corporation under the federal Internal Revenue Code, had no paying clients at any time during the Relevant Period.
60. During the Relevant Period, TRC Trading, Inc. never offered or provided services to the public.
61. Mr. Cain never prepared the tax returns for TRC Trading, Inc.
62. The federal income tax returns for TRC Trading, Inc. during the Relevant Period contained the following deductions for salary and pension contributions to or on behalf of Mr. Cain:

Tax Year	Salary	Pension Contribution
1996		
1997		
1998		
1999		
2000		
2001		
2002		
2003		
2004		

63. Mr. Jacobson, a certified public accountant, prepared tax returns for the various partnerships and companies owned by the Cains during the Relevant Period.
64. Mr. Jacobson recommended that Mr. Cain's pension plan be terminated in 2004 when he began preparing TRC Trading, Inc.'s tax returns, since there was no business activity taking place and there was no reason to have such liability. TRC Trading, Inc. did not file any amended federal income tax returns for any years in the Relevant Period.
65. During the Relevant Period, Mr. Cain made only a few trades (approximately ten or less) each year through TRC Trading, Inc.
66. The Tyler R. Cain Family Foundation (the "Foundation") was organized to facilitate charitable donations.

67. During the Relevant Period, through the Foundation, the Cains donated approximately \$2.5 million to various charities located in both Florida and Illinois.
68. During the Relevant Period, Mr. Cain was (and currently continues to be) in the process of shifting the majority of donations made by the Foundation from charities located in Illinois to charities located in Florida.
69. Mrs. Cain is an Illinois licensed interior designer, which license she obtained in or around 1992. During the Relevant Period, Mrs. Cain renewed her license every two years as required by Illinois law in order to maintain her license. While the renewal form contains a space for address change, Mrs. Cain continued to list an Illinois address on the renewal forms throughout the Relevant Period.
70. Mrs. Cain has never conducted business within or without Illinois as an interior designer, having obtained and used her Illinois license for personal decorating activities.
71. During the Relevant Period, Mrs. Cain was an owner of Design III, which was an organization that Mrs. Cain and a few others used to purchase interior design materials for personal use. Mrs. Cain never intended to and never did provide services for profit through this organization.
72. Mrs. Cain's involvement in Design III gave her access to the Design Center in Florida, Illinois and New York.

Documents

73. The parties have stipulated to the accuracy and authenticity of the following documents:
  - A. The Cains' American Express statements for the time period from July 12, 2001 through August 19, 2004;
  - B. Net Jets Customer Activity Report for the time period from 1995 through 2005;and

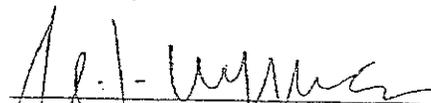
C. The following tax returns:

YEAR	TAXPAYER	TYPE OF RETURN
1996	Tyler & Gertrude Cain	Florida Individual and Joint Intangible Tax Return for Individual and Joint Filers as of January 1, 1996
1997	Tyler & Gertrude Cain	Florida Individual and Joint Intangible Tax Return for Individual and Joint Filers as of January 1, 1997
1998	Tyler & Gertrude Cain	Florida Individual and Joint Intangible Tax Return for Individual and Joint Filers as of January 1, 1998
2004	Rolly Investments, L.P.	1065 U.S. Return of Partnership Income
1998	TRC Investments, LLC	1065 Initial Return - U.S. Return of Partnership Income
1999	TRC Investments, LLC	1065 U.S. Return of Partnership Income
1999	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2000	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2000	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2001	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2001	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2002	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2002	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2003	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2003	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2004	TRC Investments, LLC	1065 U.S. Return of Partnership Income
2004	TRC Investments, LLC	IL-1065 Illinois Partnership Return of Income
2002	TDC Investments, L.P.	1065 U.S. Return of Partnership Income
2003	TDC Investments, L.P.	1065 U.S. Return of Partnership Income
2004	TDC Investments, L.P.	1065 U.S. Return of Partnership Income
1996	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
1997	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
1998	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
1999	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
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2002	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
2003	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
2004	TRC Trading Inc.	1120S U.S. Income Tax Return for an S Corporation
2004	TRC Trading Inc.	IL-1120-ST Small Business Corporation Tax Return
1995	TRC I Investments L.P.	1065 - Short Year Initial Return - U.S. Return of Partnership Income
1995	TRC I Investments L.P.	IL-1065 Illinois Partnership Return of Income
1996	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
1997	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
1998	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
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2002	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
2003	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
2004	TRC I Investments L.P.	1065 U.S. Return of Partnership Income
1995	TRC II Investments, L.P.	1065 - Short Year Initial Return - U.S. Return of Partnership Income
1995	TRC II Investments, L.P.	IL-1065 Illinois Partnership Return of Income
1996	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
1997	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
1998	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
1999	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2000	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2001	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2002	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2003	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2004	TRC II Investments, L.P.	1065 U.S. Return of Partnership Income
2002	TRC III Investments, L.P.	1065 U.S. Return of Partnership Income
2003	TRC III Investments, L.P.	1065 U.S. Return of Partnership Income
2004	TRC III Investments, L.P.	1065 U.S. Return of Partnership Income

The foregoing is hereby agreed and stipulated to:

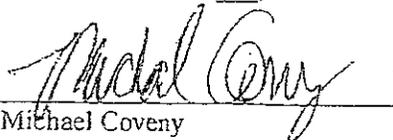
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