
In The Illinois Independent Tax Tribunal
Cook County, Illinois

**TYLER R. AND TALBOT DEBUTTS
CAIN,**

Petitioners,

v.

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.

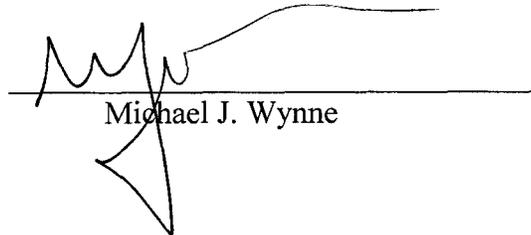
15 TT 63

Chief Judge JAMES M. CONWAY.

NOTICE OF FILING

TO: See Attached Certificate of Service

PLEASE TAKE NOTICE that on December 11, 2015, I caused to be filed with the Illinois Independent Tax Tribunal, the **PETITIONERS' MOTION FOR LEAVE TO REPLY**, a copy of which is attached hereto and herewith served upon you.



Michael J. Wynne

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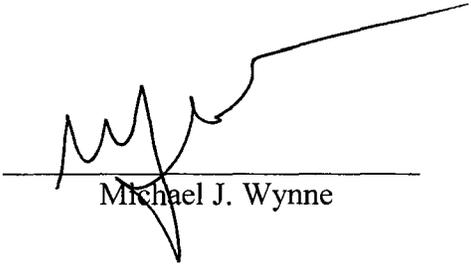
CERTIFICATE OF SERVICE

The undersigned, an attorney, does hereby certify that I caused the **PETITIONERS' MOTION FOR LEAVE TO REPLY** to be served upon:

Rebecca L. Kulekowskis, Special Assistant Attorney General
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by electronic mail delivery on December 11, 2015.

By:



Michael J. Wynne

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,)	
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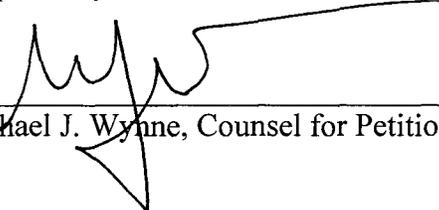
PETITIONERS' MOTION FOR LEAVE TO REPLY

Petitioners move for leave to reply to the Department's Response to Petitioners' Motion to Quash Discovery. In its Response, the Department makes certain assertions that should be brought to the attention of the Tribunal. Accordingly, Petitioners requests leave to submit a very brief Reply to address these assertions.

WHEREFORE, Petitioners move this Honorable Court to grant leave for Petitioners to reply to the Department's Response to Petitioners' Motion to Quash Discovery.

December 10, 2015

Respectfully Submitted,



Michael J. Wynne, Counsel for Petitioners

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IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

Tyler R. and Talbot Debutts)	
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)	
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PETITIONERS’, TYLER R. AND TALBOT DEBUTTS CAIN, REPLY TO RESPONDENT’S RESPONSE TO PETITIONERS’ MOTION TO QUASH DISCOVERY

Petitioners, Tyler R. and Talbot Debutts Cain (the “Cains”) write to briefly reply to the Department’s Response to Petitioners’ Motion to Quash Discovery. In addition to the parties’ competing arguments for or against estoppel and relevance, we feel obligated to bring the following points to the court’s attention, submitted as bullet points for brevity’s sake.

- The Department cites *federal* case law regarding whether estoppel is proper. See pp. 10–11. But estoppel in Illinois state court is a state law matter, governed by *Illinois’* Code of Civil Procedure, Supreme Court Rules, and case law on the subject. Federal case law is not binding on Illinois estoppel questions, and furthermore, no deficiency in Illinois estoppel law has been identified that would warrant seeking persuasive guidance in federal law. .

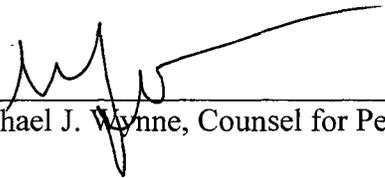
- The Department makes a similar mistake with respect to the definition of “commercial domicile,” citing a U.S. Supreme Court case, *Wheeling Steel Corp. v. Fox*, 298 U.S. 193 (1936). See p. 15. First, , the term “commercial domicile” is already defined by the Illinois Income Tax Act at 35 ILCS 5/1501(a)(2) and construed in the Department’s own regulations (86 Ill. Admin. Code § 100.3210). References to sources outside of Illinois law are unnecessary in this instance. Second, the Department wrongly states it is “the landmark case concerning commercial domicile” when in fact it concerns the propriety of applying an *ad valorem* property tax to the intangible property of a foreign corporation while tangentially touching upon the definition of “commercial domicile.” *Wheeling Steel* has nothing to do with the case at bar because it’s a property tax case that antedates the enactment of the Illinois income tax by 33 years.

- Likewise, the Department cites federal case law for the proposition that there exists a “duty of consistency.” *See* pp. 17–18. But the “duty of consistency” is not recognized under Illinois law, and there are no Illinois case or regulation adopting such a duty. Furthermore, no case from any jurisdiction was cited for the proposition that the duty of consistency can prevail in the face of known, sworn facts to the contrary, *i.e.*, that there were no clients, no trades for third-parties, no business, and testimony that the returns were in error.
- The Department asserts that whether TRC Trading, Inc. is a passive business depends on if it satisfies the passive business test set forth in I.R.C. § 469. *See* p. 19. This assertion confuses two distinct concepts. For federal income tax purposes, and for Illinois income tax purposes due to conformity, whether one is “passive” under § 469 is important for determining whether one is entitled to various tax benefits and deductions. But § 469 is a federal tax provision that has nothing to do with establishing whether certain business activities are under the IITA nonbusiness income under Illinois income tax law. This latter question is one of U.S. Constitutional law, as construed by the Supreme Court through the unitary business doctrine, as that is the basis for the definition of “business income” under the IITA and all falling outside that definition is nonbusiness income. Section 469 may have potentially applied to limit TRC Trading, Inc.’s business deductions, but that is not the issue in this case.
- The Department ignores its own admission in the Answer that the stock sold was registered in the name of Tyler Cain, not TRC Trading, Inc., and that it was not sold as service or trade for any clients or third-parties.
- The Department never denies that testimony taken *during or after the tax year at issue* through their deposition of Mr. Cain’s CPA already established there were no clients, no trades for third-parties, and no business, so all that is needed is to confirm if that was still true during the tax year at issue.
- The Department ignores that the Circuit Court in *Cain v. Hamer* already rejected their argument that an erroneous tax return is determinative of whether there was an active trade or business. The return by itself does nothing to rebut the stipulation they signed.
- *Cain v. Hamer* was decided on cross-motions for summary judgment. Here, the Department questions the Cains’ credibility and offers this as a reason for why discovery is relevant. If the Department really did not find the sworn testimony of the Cains or their accountant credible, however, they would not have agreed to a voluminous stipulation of facts in *Cain v. Hamer* based almost entirely on the depositional testimony

of Tyler Cain and his accountant. The Department's position of "credible until we lost" is precisely the type of gamesmanship that judicial estoppel is meant to stop.

December 10, 2015

Respectfully Submitted,



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