

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

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| MICHAEL ROTHMAN AND JENNIFER |) | |
| ROTHMAN, |) | |
| Petitioners, |) | |
| |) | |
| |) | |
| v. |) | 18 TT 30 |
| |) | 18 TT 132 |
| |) | Judge Brian F. Barov |
| ILLINOIS DEPARTMENT |) | |
| OF REVENUE, |) | |
| Respondent. |) | |

ORDER

At the January 27, 2022 status conference, with all parties present, the Petitioners presented a motion for protective order and for supervision of discovery, and the Department presented a motion for leave to serve in excess of 30 interrogatories. As explained in more detail below, the Petitioners’ motion is granted in part and denied in part, and the Department’s motion is denied. Further, written discovery will be closed in 30 days, as will be explained in more detail below. Finally, the Petitioners have sent out deposition notices for current and past Department employees that have raised questions regarding deposition scheduling. While I will not issue an order on deposition scheduling at this time, I will provide some guidance on how the parties should proceed.¹

Background

The Petitioners are a married couple who filed jointly for income tax purposes and claimed Florida residency for the 2014 and 2015 calendar tax years. The

¹ This decision is based solely on arguments and evidence presented on the discovery matters discussed in this order. The ruling expresses no opinion as to the merits of the underlying litigation between the Petitioners and the Department.

Department disagreed with the Petitioners' residency claim and issued statutory notices assessing Illinois income tax and penalties for the 2014 and 2015 tax years and denying refund requests for those tax years. The Petitioners have challenged the Department's notices in the Tribunal in this consolidated action.

As noted in a previous order this dispute has generated protracted and prolix discovery and numerous discovery disputes. To date, the Department has served 26 third-parties subpoenas (13 regarding each Petitioner) seeking, among other things, telephone and utility records, credit card and bank records, vehicle registration records, car-sharing and food delivery records, toll-way usage, vehicle delivery usage, parking records, mobile phone usage, satellite radio usage, building entry data, gym membership and usage records and records for dates and locations of medical care. In theory, at least, this information is fair game, as both the quantity and quality of Petitioners' contacts with Illinois are relevant to determining their "intent" to be considered as taxable residents of Illinois for the 2014 and 2015 tax years. *See Cain v. Hamer*, 2012 IL App (1st) 112833, ¶¶16-22. Whether any particular datum is admissible or the weight to be given it remains to be seen.

The incident triggering the Petitioners' motion for protective order and supervision of discovery is the Department's request to subpoena the records of Randy Schuster & Associates, Inc. ("Schuster subpoena"), a company that provides party planning services. Initially, the Petitioners objected only to the Schuster subpoena's breadth—it sought lists of guests that were invited to or who attended events planned for the Rothmans during the 2014 to 2015 tax year. I agreed with Petitioners' request because the burdensomeness of providing this information outweighed any marginal relevance it might provide in this case and removed that request from the subpoena. As redrafted, the subpoena sought the production of the following information:

1. Any and all contracts, amended contracts, and invoices, including contracts, amended contracts and invoices with third party vendors.
2. Identify all appointment date(s) and location(s) in which you or someone from Randy Schuster & Associates, Inc., or any third-party vendor personally met with Jennifer Rothman and/or Michael

- Rothman for any and all events.
3. Date(s) and location(s) of any and all event(s).
 4. All contact information, including phone numbers and email addresses of or for Michael Rothman, Michael G. Rothman and/ or Jennifer Rothman provided to Randy Schuster & Associates, Inc., and its officers and employees.
 5. Correspondence files.

In their motion for protective order and supervision of discovery, the Petitioners have moved to quash the Schuster subpoena entirely as excessive, overly broad and overly intrusive. The motion also contends that the Department's subpoenas do not comply with parts of Supreme Court Rules 204(a)(4) and 201(o). Rule 204(a)(4) states, regarding the production of documents: "[u]nless otherwise ordered or agreed, reasonable charges by the deponent for production in accordance with this procedure shall be paid by the party requesting the same, and all other parties shall pay reasonable copying and delivery charges for materials they received." Ill. S. Ct. Rule 204(a)(4). Supreme Court Rule 201(o) states that "a copy of any discovery request under these rules to any nonparty shall be filed with the clerk in accord with Rule 104(b)." Ill. S. Ct. Rule 201(o). The Petitioners argued that these rules were violated by the Department when it sent a cover letter to the third-party subpoena recipients asking for the waiver or reduction of copying fees, without first either seeking agreement from the Tribunal or the Petitioners.

The Petitioners also object to the subpoena's wording, directed at the subpoenaed party, stating: "YOUR FAILURE TO PRODUCE THE DOCUMENTS SET FORTH ABOVE WILL SUBJECT YOU TO PENALTIES PRESCRIBED BY LAW." The Petitioners contend that the Tribunal has no subpoena enforcement powers under its authorizing statute and thus this penalty statement should be stricken.

The Department's motion for leave to file in excess of 30 interrogatories seeks to serve Interrogatory No. 31 on the Petitioners. Interrogatory No. 31 seeks the identity of each person who provides the following services for Jennifer Rothman:

1. Housekeeping and/or cleaning (any type including light duty or deep cleaning);

2. Shopping (any type including department store, discount store, high-end store, electronic/computer/phone store, home/appliance store, clothes store, grocery store, pharmaceutical store;
3. Preparing any meals consumed by either Petitioner;
4. Preparing any type of beverages including but not limited to alcohol, non alcoholic, fruit, vegetable, powder, vitamin, dietary supplements, juices, smoothies, coffee, tea, etc.;
5. Scheduling any appointments, whether medical, personal and/or social/entertainment, and;
6. Conducting any banking transactions, including but not limited to cashing checks, making deposits, paying credit card and/or utility bills (gas, electric, cable, water, etc.), collecting/retrieving, mailing or posting letter(s)/packages with or from the U.S Post Office, UPS or FedEx locations, etc.

While the Illinois Supreme Rules contemplate broad discovery of relevant information, *see* Ill. S. Ct. Rule 201, discovery it is not unlimited. Duplicative discovery should be avoided. *Zack Co. v. Sims*, 108 Ill. App. 3d 16, 38 (1st Dist. 1982) (citing Supreme Court Rule 201(a)). Even relevant discovery should be limited by “the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.” *Burdess v. Cottrell, Inc.*, 2020 IL App (5th) 190279, ¶¶ 76-77 (quoting Ill. S. Ct. R. 201(c)(3)). Discovery should be neither a “fishing expedition,” *see id.* at ¶ 84, nor may a party “dredge an ocean . . . in an effort to capture a few elusive, perhaps non-existent, fish,” *Carlson v. Jerousek*, 2016 IL App (2d) 151248, ¶65 (internal quotation marks omitted).

The relevancy of information sought in the Schuster subpoena, which seeks to uncover details on the event planning process is of attenuated relevancy, at best. Given the crush of information in the Department’s possession regarding the Petitioners’ daily presence and activities in Illinois seeking information on third-party invoices and contracts is duplicative and likely intrusive of the deponent’s business activities and client relations, while adding nothing to this case that is not already known.

The same holds true for the information the Department seeks in Interrogatory No. 31. I see little or no relevance to the identity of the individual

that runs to the bank for Jennifer Rothman or prepares her smoothies. The Department already has voluminous information on Jennifer Rothman's banking transactions and spending patterns, presence and activities in Illinois. If the Department feels that there are gaps in the narrative, those can be filled through appropriate party depositions, not by exposing a third-party to potential discovery.

I will thus grant Petitioners' motion to quash the Shuster subpoena and I will deny the Department's request to serve Interrogatory No. 31. Given that the Shuster subpoena is quashed, as the Petitioner agrees, the other relief that it seeks regarding the Tribunal subpoenas is now moot, and the Petitioners' motion in that regard will be denied.

The Department's discovery in this case has been extensive and intensive and there appears to be no end in sight. Therefore, written discovery in this case will be closed as of February 28, 2022. This means that if either party seeks additional written discovery or is contemplating a motion directed at discovery, those requests or motions should be served and filed by the discovery closure date. Further, the Department must complete any outstanding written discovery to Petitioners including compliance with the discovery order of July 15, 2021, which has not yet been completed and certified. Additional requests for third-party subpoenas by the Department will not be looked upon favorably.

Finally, at the status hearing, the Tribunal was advised that the Petitioner has sent several deposition notices to Department officials. Some are no longer employed by the Department and some, perhaps all, are located outside of the Chicago metropolitan area. The parties also discussed the scheduling of depositions but have run into some disagreement as to when, where and how depositions should proceed. To avoid further litigation over, and hopefully expedite these matters, the Department is urged to provide current information on the proposed deponents current address to the degree that they able to do so. Further, the location of depositions is governed by Supreme Court Rules 203 and 206. Both permit depositions by remote electronic means. Again, and while there is no formal motion

before the court and any ruling on where and how depositions should occur would be premature, the parties are encouraged to conduct depositions remotely.

Conclusion

It therefore ORDERED that:

- 1) the motion for protective order and for supervision of discovery is GRANTED to the extent that the subpoena directed at Randy Schuster & Associates, Inc. is quashed and in all other regards the motion for protective order and supervision of discovery order is DENIED;
- 2) the Department's motion for leave to serve in excess of 30 interrogatories is DENIED;
- 3) written discovery will close as of February 28, 2022, as explained in the body of the order above; and
- 4) the matter is reset for a status conference on March 17, 2022, at 10:00 a.m., by telephone.

s/ Brian Barov
BRIAN F. BAROV
Administrative Law Judge

Date: January 28, 2022