

**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.	)	

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**ORDER**

The Department has filed a motion to compel responses to outstanding document production requests and interrogatories, and the Petitioners have filed their response. The matter was heard at the March 17, 2022 status conference. The motion and response raise both general and specific issues that will be addressed in sequence below.

**General Issues**

**General Issue 1:** The Petitioners argue that the motion to compel should be denied because the Department stated that the motion was brought pursuant to Supreme Court Rules 213 and 214, and not Rule 219(a). All three provisions authorize court hearings to address discovery disputes, and the Petitioners have not shown how this defect in the Department’s motion, if any, prejudiced them. The Petitioners’ request for relief is DENIED.

**General Issue 2:** The Petitioners complain about the timeliness of the motion. Supreme Court Rules 213(d) and 214(c) both state that objections to discovery

requests “shall be heard . . . upon prompt notice and motion.” Ill. Sup. Ct. R. 213(d); Ill. Sup. Ct. R. 214(c). The Petitioners argue that they responded to the Department’s production request on October 8, 2020 and provided supplemental production in July, August and September 2021. Pet’rs’ Resp. at 2. They also responded to the Department’s Interrogatories on July 8, 2021. *Id.* The Petitioners contend that the Department did not act promptly in waiting until February 22, 2022 to file its motion to compel.

Discovery has been sharply contested here and thus has progressed slowly. In the past year, the Petitioners have filed a motion to compel, a motion to quash, and a motion for protective order and supervision, all directed at the Department’s discovery requests. The Department has also filed a motion for leave to serve in excess of 30 interrogatories. All of these discovery motions have contributed to the delay in addressing the discovery disputes leading to the present motion. The present motion was filed promptly in response to the Tribunal’s January 28, 2022 order closing discovery. Under the circumstances, the Department’s motion is not untimely. The Petitioners’ request for relief is DENIED.

**General Issue 3:** Throughout their motion, the Department seeks to strike certain allegations in the amended complaint as relief for the Petitioners’ alleged failure to comply with its document production requests. In response, the Petitioners argue that they have provided documents supporting their allegations.

While striking allegations or pleadings is a permitted form of relief under Supreme Court Rule 219(c), the Department has not provided any authority supporting a finding that the allegations in question must be proven by documentary evidence. Further, the Petitioners claim that the Department’s production requests are overlapping and duplicative, that their responses cover the production requests now objected to by the Department, and that the Department has yet to take the Petitioners’ depositions, which will provide supporting evidence of the contested allegations. The Department’s motion to strike the specific allegations of the complaint are DENIED in all respects.

## Specific Issues

**Production Request 9:** The Department seeks various documents related to Petitioners' real estate ownership in Illinois, Colorado and Florida. The Department complains that Petitioners only provided partially executed documents and that their supplemental production did not pertain to tax years in issue. The only responsive document provided was a fully executed HUD agreement.

The Petitioners respond that they have provided documents that show real estate ownership in other responses and that producing the countersigned documents is irrelevant and overly burdensome.

The Petitioners are only required to produce documents within their "possession custody or control." *See Wiebusch v. Taylor*, 97 Ill. App. 3d 210, 214 (1st Dist. 1981). If the Petitioners have additional documents responsive to the Department's production request, they should produce them. If not, they should so state.

**Production Requests 16 & 20:** The Department seeks documents showing ownership or purchases of motor vehicles owned by Petitioners. The Department contends that documents provided relating to vehicle ownership and purchases are outside the tax period in question.

The Petitioners respond that the Department has already obtained documents showing the Petitioners use of motor vehicles in Illinois.

If the Petitioners have additional documents responsive to the Department's production request, they should produce them. If not, they should so state.

**Production Request 17:** The Department seeks various documents related to garage, docking or storage rental agreements for motor vehicles.

The Petitioners assert that they "have not entered in such agreements for vehicles." Pet'rs' Resp. at 5. The Petitioners are not required to provide a further response to this production request.

**Production Request 19:** The Department seeks copies of documents evidencing home, life, health and automobile insurance for the relevant tax periods.

The Petitioners respond that they have provided insurance coverage for the tax years in issue and have not located any further responsive documents. The Petitioners are not required to provide a further response to this production request.

**Production Request 25:** The Department seeks flight logs or manifests for flights on their private aircraft.

The Petitioners respond that there are no manifests for their private aircraft and that they previously provided all of the flight documents in their possession to the Department.

The Petitioners are not required to produce flight manifests. If the Petitioners have additional documents responsive to the Department's production request, they should produce them. If not, they should so state.

**Production Request 32.** The Department seeks information regarding personal and business credit cards and credit card statements. The Department complains that they have not received statements for Macy's and Bloomingdale's credit cards.

If the Petitioners have additional documents responsive to the Department's production request, they should produce them. If not, they should so state.

**Production Request 33:** The Department seeks a copy of a current credit report in allegedly in possession of the Petitioners. The Petitioners argue that the Tribunal denied the request for a copy of the credit report in its October 20, 2021 order. That is not correct. In that order, the Tribunal denied the Department's request to obtain the credit reports through third-party subpoenas and directed it to first to seek the same information through party discovery. They are now seeking a copy of the credit report through party discovery.

If Petitioner's still have possession, custody or control of a copy of a credit report covering the relevant tax period, they should turn it over to the Department.

If they have remaining objections to its production, they may seek further relief from disclosure. If the Petitioners are not in possession of a copy of the credit report they should so state.

**Production Request 45:** The Department seeks documents pertaining to train and rail travel, including tickets and receipts.

The Petitioners respond that they have no documents for train or rail travel. No further response is required to this production request.

The Department also seeks additional information on commercial flights, specifically flights on Japan Airlines that were disclosed on Petitioners' American Express card. The Petitioners contend that the Department has not identified other gaps in the record that warrant the requested discovery.

Rothman 2232, attached as part of Exhibit 3 to the Petitioners' Response to the Department's Motion to Compel shows a flight from Chicago to Tokyo on November 1, 2015. *See* Pet'r Resp. at 27/32. The other American Express entries showing airline ticket purchases omit the flight origin or destination information.

Petitioners will respond to the Department's request to provide the missing information on origination and destination of flights purchased on their American Express card, to the extent such information is in their possession, custody or control and is not duplicative. If they have no further information on this matter, they should so state.

**Production Request 71:** The Department seek additional documents evidencing the Florida domicile of Michael Rothman's mother.

The Petitioners have responded that they have no additional documents regarding the domicile of Michael Rothman's mother. The Petitioners are not required to provide any additional response to this production request.

**Production Request 72:** The Department seeks a copy of a residential lease signed by Jennifer Rothman in February 2013.

If the Petitioners have additional documents responsive to the Department's production request, they should produce them. If not, they should so state.

**Production Request 78:** The Department seeks documents evidencing leasing of dockage space in the Miami Beach Marina.

If the Petitioners have additional documents responsive to the Department's production request, they should produce them. If not, they should so state.

**Production Request 82:** The Department seeks documentary evidence regarding aircraft storage and maintenance.

If the Petitioners have additional documents responsive to the Department's production request, they should produce them. If not, they should so state.

**Production Requests 99, 100, 105, 106, 109:** The Department seeks documents showing Petitioners' nonresident status in 2011, 2012, and 2013.

The Petitioners claim that the response is duplicative of the responses to Production Requests 5-15.

If the Petitioners have possession of additional responsive documents that are not duplicative of Production Requests 5-15, they should produce them. If they have no further documents, they should so state.

At the hearing, the Petitioners, asked whether the court was overruling their objections and the court deferred on that question. On further, review, to the extent that the Petitioners have nonduplicative documents to produce, their objections Production Requests 99, 100, 105, 106, 109 are DENIED.

**Interrogatories 20 & 21:** The Department seeks the source of travel outside of Illinois.

The Petitioner's response is that they have provided document production on this issue. If their response is complete, the Petitioner's should so state.

**Interrogatory 29:** The Department seeks information regarding the Petitioners' and their children's medical providers during the tax years in question. In

particular, the Department requests information on treatment at the Few Institute of Chicago, which appears on one the Petitioners' credit cards.

The Petitioners' children were adults during the tax years in question. Their medical information is either irrelevant or any marginal relevance is outweighed by the burden of producing this information. The Petitioners are not required to provide any additional response to this interrogatory.

If the Petitioners have documents regarding treatment dates for them at the Few Institute of Chicago, they should produce that information. Additional information regarding medical treatment at the Few Institute is irrelevant or overly burdensome and the Petitioners are not required to provide any additional response to this interrogatory.

### **Conclusion**

It is ORDERED that:

- 1). On or before April 19, 2022 the Petitioners will complete their discovery responses as specified in this order and certify that their discovery responses are complete; and
- 2). the matter is set for a further status conference on May 5, 2022, at 9:30 a.m., by telephone.

s/ Brian Barov  
BRIAN F. BAROV  
Administrative Law Judge

Date: March 21, 2022