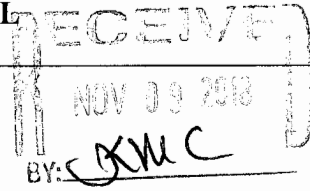


**IN THE ILLINOIS
INDEPENDENT TAX TRIBUNAL**



Michael Rothman and Jennifer Rothman,)
)
 Petitioners,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE,)
)
 Respondent.)

NO. 18 TT 132
Individual Income Tax
TYE: 12/31/2014 and 12/31/2015

PETITION

Petitioners, Michael Rothman and Jennifer Rothman, bring this action pursuant to 35 ILCS 1010/1-50 to protest and obtain relief from this Tribunal in respect to two Notices of Claim Denial issued to them under the Illinois Income Tax Act (“IITA”) [35 ILCS 5/101 et seq.] by the Illinois Department of Revenue (the “Department”).

Nature of the Action

1. This petition concerns the Department’s denial of personal income tax refunds claimed by Petitioners. The Petitioners contest the Department’s conclusion that they owed Illinois personal income tax as Illinois residents for tax years 2014 and 2015.

Parties

2. Michael and Jennifer Rothman are individuals married to each other who, for each tax year at issue, jointly-filed a personal Illinois nonresident individual income tax return and paid tax therein shown due to Illinois.

3. The Illinois Department of Revenue is the Illinois agency charged with the administration and enforcement of the Illinois Income Tax Act.

Jurisdiction

4. This petition is timely filed within 60 days of the issuance of the Notices of Claim Denial attached hereto as *Exhibit 1* and the sum total at issue exceeds \$15,000.00.

5. Petitioners accept the Tax Tribunal's designation of its office in Cook County as the venue in which to conduct the hearing in this matter.

Allegations Common to All Counts

6. Michael and Jennifer Rothman were married in 1981.

7. During the course of their marriage, Petitioners raised four children in Illinois.

8. Petitioners' youngest child graduated from high school in 2010. At all subsequent times, all of Petitioners' children have been adults, attending college and pursuing their careers both within and without Illinois.

9. Petitioners have not claimed a homestead tax exemption on any real property in Illinois since 2004.

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

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

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

13. Beginning in February of 2010, through a lease by Jennifer, Petitioners rented a condominium in Miami, Florida.

14. In February of 2013, Jennifer renewed and amended the lease of the condominium in Miami, Florida.

15. In November of 2013, Michael purchased a penthouse unit in Miami, Florida.

16. In 2016, through a wholly-owned entity, Petitioners purchased another condominium in Miami, Florida for investment purposes.

17. Petitioners have during the tax years at issue claimed a homestead exemption on their residence in Miami, Florida, as actual, and officially domiciled, residents of Florida.

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

19. Since at least 2013, Michael and Jennifer have held Florida driver licenses.

20. During the tax years at issue, and at all times relevant hereto, Petitioners owned several vehicles registered in their name in Florida.

21. During the tax years at issue, and at all times relevant hereto, Petitioners maintained a 58-foot boat and a 77-foot boat, both registered in their names in Florida.

22. Since October of 2011, Michael has held a license for Dockage Space at the Miami Beach Marina for a vessel owned by a limited liability company wholly owned by Michael.

23. In October of 2013, Petitioners purchased a large home in Aspen, Colorado.

24. Since 2013 and at all times relevant hereto, Petitioners have kept several vehicles registered in their name in Colorado.

25. Since at least 2012 and at all times relevant hereto, Petitioners, through a wholly owned limited liability company, have owned two passenger jet aircraft which are hangered and maintained in Wisconsin.

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

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

28. During the tax years at issue, and at all times relevant hereto, the estimated value of Petitioners' real estate and tangible personal property assets outside Illinois was approximately 9 times greater than the value of Petitioners' real estate and tangible personal property assets within Illinois.

29. During all tax years relevant hereto, Petitioners' annual cost of travel outside Illinois was more than 3 times greater than their Illinois income tax liability, whether as residents or non-residents of Illinois.

30. During the tax years at issue Michael spent approximately 220 days per year outside of Illinois.

31. Since approximately 2004 and at all times relevant hereto, among other businesses, Michael and Jennifer purchased a chemical distribution business, based in West Palm Beach, Florida. Michael has been the manager of the business, and as with his other businesses, extensive travel has also been required of him by this Florida business.

32. Michael and Jennifer, indirectly, have also recently founded a new business in Tampa, Florida.

The Department's Audit of Petitioners

33. As a nonresident of Illinois, and not being the recipient of income from Illinois sources, for the tax year 2013 Jennifer did not file an Illinois income tax return.

34. As a non-resident of Illinois, but having received income from Illinois sources, for the 2013 tax year Michael filed an Illinois non-resident return and paid tax on the income reported to Illinois.

35. For the 2014 tax year, as nonresidents of Illinois, Michael and Jennifer filed a nonresident joint Illinois income tax return and paid tax due to Illinois.

36. For the 2015 tax year, as nonresidents of Illinois, Michael and Jennifer filed a nonresident joint Illinois income tax return and paid tax due to Illinois.

37. In February of 2017, Michael and Jennifer received a Notice of Audit Initiation from the Department for the 2014 and 2015 tax years.

38. The auditor assessed amounts of \$31,648.00 for 2014 and \$3,364.00 for 2015, concluding that Petitioners were Illinois residents in both years.

39. Petitioners paid the tax assessment and filed claims for refunds on March 13, 2018, because Petitioners assert they are not residents of Illinois.

40. The Department issued Notices of Claim Denial on October 5, 2018, denying Petitioners' refunds in full, erroneously treating Petitioners as Illinois residents during tax years 2014 and 2015.

COUNT I

The Rothmans Were Not Illinois Residents for the 2014 Tax Year

41. Petitioners by this reference incorporate and re-allege paragraphs 1 through 40 hereof as though fully set forth in this Count I.

42. The IITA defines the word "resident" as "an individual (i) who is in this State for other than a temporary or 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)(A).

43. As of at least 2010, Michael and Jennifer both permanently left Illinois, and have only returned to Illinois since for temporary or transitory purposes.

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

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

46. Therefore, Petitioners were not residents of Illinois for purposes of the IITA § 5/1501(a)(20)(A) for tax year 2014.

47. The Department promulgated a regulation stating in pertinent part:

Presumption of residence. The following create rebuttable presumptions of residence. These presumptions are not conclusive and may be overcome by clear and convincing evidence to the contrary.

1) *An individual receiving a homestead exemption (see 35 ILCS 200/15-175) for Illinois property is presumed to be a resident of Illinois.*

2) *An individual who is an Illinois resident in one year is presumed to be a resident in the following year if he or she is present in Illinois more days than he or she is present in another state.*

86 Ill. Admin. Code § 100.3020(f)(2) (eff. April 19, 2013).

48. Petitioners did not claim a homestead exemption for any Illinois property during tax year 2014.

49. The Petitioners were not Illinois residents in 2013, so 86 Ill. Admin. Code § 100.3020(f)(2) is not applicable.

50. Accordingly, Petitioners were not residents of Illinois during the 2014 tax year.

WHEREFORE, Petitioners pray that the Tax Tribunal: (1) find and determine that Petitioners were not residents of Illinois for the 2014 tax year; (2) direct the Department of Revenue to refund to Petitioners the amount claimed in the Notice of Claim Denial for tax year 2014 (see **Exhibit 1**); and (3) provide any other relief to Petitioners as deemed necessary or just by the Tribunal.

COUNT II

The Rothmans Were Not Illinois Residents for the 2015 Tax Year

51. Petitioners by this reference incorporate and re-allege paragraphs 1 through 50 hereof as though fully set forth in this Count II.

52. The IITA defines the word “resident” as “an individual (i) who is in this State for other than a temporary or 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)(A).

53. As of at least 2010, Michael and Jennifer both permanently left Illinois, and have only returned to Illinois since for temporary or transitory purposes.

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

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

56. Therefore, Petitioners were not residents of Illinois for purposes of the IITA § 5/1501(a)(20)(A) for tax year 2015.

57. The Department promulgated a regulation stating in pertinent part:

Presumption of residence. The following create rebuttable presumptions of residence. These presumptions are not conclusive and may be overcome by clear and convincing evidence to the contrary.

- 1) *An individual receiving a homestead exemption (see 35 ILCS 200/15-175) for Illinois property is presumed to be a resident of Illinois.*
- 2) *An individual who is an Illinois resident in one year is presumed to be a resident in the following year if he or she is present in Illinois more days than he or she is present in another state.*

86 Ill. Admin. Code § 100.3020(f) (eff. April 19, 2013).

58. Petitioners did not claim a homestead exemption for any Illinois property in tax year 2015.

59. The Petitioners were not Illinois residents in 2014, so 86 Ill. Admin. Code § 100.3020(f)(2) is not applicable.

60. Accordingly, Petitioners were not residents of Illinois during the 2015 tax year.

WHEREFORE, Petitioners pray that the Tax Tribunal: (1) find and determine that Petitioners were not residents of Illinois for the 2015 tax year; (2) direct the Department of Revenue to refund to Petitioners the amount claimed in the Notice of Claim Denial for tax year 2015 (see **Exhibit 1**); and (3) provide any other relief to Petitioners as deemed necessary or just by the Tribunal.

COUNT III

The Department's Regulation Regarding Presumptions of Residency is Invalid

61. Petitioners by this reference incorporate and re-allege paragraphs 1 through 60 hereof as though fully set forth in this Count III.

62. Section 100.3020(f) of the IITA regulations imposes a presumption of residency that is not found in the governing statute.

63. As a matter of Illinois law, agencies cannot narrow or broaden the scope of a tax statute or pass regulations that are inconsistent with the governing statutes. *See Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶¶ 61 & 64.

64. Section 100.3020(f) of the IITA regulations broadens the statutory scope of Illinois residency. The governing statute [35 ILCS 5/1501(a)(20)(A)], unlike the regulations, does not contain a presumption of residency dependent on property tax homestead exemption claims, the taxpayer's residency status in the prior year, or the number of days a person spends in

Illinois relative to other places during the year, and does not set an evidentiary standard uniquely for determination of residency. Section 100.3020(f) of the IITA regulations goes beyond the scope of, and is therefore inconsistent with, 35 ILCS 5/1501(a)(20)(A).

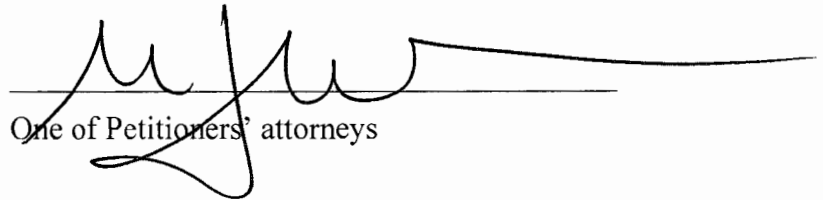
65. A taxpayer who by the preponderance of the evidence could prove he or she was not present in Illinois for other than temporary or transitory purposes, or was not domiciled in Illinois, and thereby could establish nonresident status under the governing statute, but would nevertheless be presumed by the Department to be a resident unless he or she rebutted by clear and convincing evidence the presumption of residency in Section 100.3020(f).

66. Therefore, Section 100.3020(f) of the IITA regulations is invalid and cannot control the Tribunal's determination as to whether Petitioners were residents of Illinois during the tax years at issue.

WHEREFORE, Petitioners pray that the Tax Tribunal find and determine facts supporting the Petitioner's contention that Section 100.3020(f) of the IITA regulations is invalid in order to develop a record for review by the Illinois Appellate Court for a determination of the facial invalidity of the regulation, pursuant to 35 ILCS 1010/1-45(f).

MICHAEL ROTHMAN AND JENNIFER ROTHMAN

By:



One of Petitioners' attorneys

Michael J. Wynne (mwynne@jonesday.com)
Jennifer C. Waryjas (jwaryjas@jonesday.com)
Douglas A. Wick (dwick@jonesesday.com)
JONES DAY
77 West Wacker Drive
Chicago, IL 60601
(312) 260-1515

EXHIBIT 1

Notice of Claim Denial
for Form IL-1040, Individual Income Tax Return



#BWNKMGV
#CNXX X145 92X5 9365#
MICHAEL ROTHMAN
ATTN: MICHAEL J WYNNE
77 W WACKER DR
CHICAGO IL 60601-1604

October 5, 2018



Letter ID: CNXXX14592X59365

Taxpayer ID: XXX-XX-
Account ID: P16873261
Audit ID: A2138552832
Reporting period: December 2014

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

If you agree and your account is in balance, no action is required. You will receive a full refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of tax at issue, exclusive of penalty and interest is more than \$15,000, or if you are not claiming an overpayment of tax but the total penalties and interest are more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice. If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within 60 days, this denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

If you have questions, call us at the telephone number shown below.

Sincerely,

Constance Beard
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012

(217) 558-4960

Statement

Date: October 5, 2018
Letter ID: CNXXX14592X59365
Name: MICHAEL ROTHMAN
Taxpayer ID: XXX-XX-
Account ID: P16873261
Audit ID: A2138552832
Reporting period: December 2014

Computation of claim denial

Reporting period ending:	12/31/2014
Claim receive date:	03/20/2018
Amount of original claim:	\$31,648.00
Amount of proposed adjustment:	(\$31,648.00)
Net claim allowed:	\$0.00

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns. For those under the bankruptcy protection, this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

Explanation of Audit Adjustments

Income Tax



_____ #BWNKMGV
#CNXX XX33 X981 3281#
MICHAEL ROTHMAN
ATTN: MICHAEL J WYNNE
77 W WACKER DR
CHICAGO IL 60601-1604

October 5, 2018



Letter ID: CNXXXX33X9813281

Taxpayer ID: XXX-XX-
Account ID: P16873261
Audit ID: A2138552832
Reporting period: December 2014

Explanation of adjustments for tax period ending 12/31/2014

Return Impact

Tax impact

We determined your correct residency status based on Illinois law.
{35 ILCS 5/1501(a)(14), (20)}

Notice of Claim Denial
for Form IL-1040, Individual Income Tax Return



October 5, 2018



Letter ID: CNXXXX9399X2XXX8

Taxpayer ID: XXX-XX-
Account ID: P16873261
Audit ID: A2138552832
Reporting period: December 2015

#BWNKMGV
#CNXX XX93 99X2 XXX8#
MICHAEL ROTHMAN
ATTN: MICHAEL J WYNNE
77 W WACKER DR
CHICAGO IL 60601-1604

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

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- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice. If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within 60 days, this denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

If you have questions, call us at the telephone number shown below.

Sincerely,

Constance Beard
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012

(217) 558-4960

Statement

Date: October 5, 2018
Letter ID: CNXXXX9399X2XXX8
Name: MICHAEL ROTHMAN
Taxpayer ID: XXX-XX-
Account ID: P16873261
Audit ID: A2138552832
Reporting period: December 2015

Computation of claim denial

Reporting period ending:	12/31/2015
Claim receive date:	10/05/2018
Amount of original claim:	\$3,364.00
Amount of proposed adjustment:	(\$3,364.00)
Net claim allowed:	\$0.00

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns. For those under the bankruptcy protection, this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

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The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

Explanation of Audit Adjustments

Income Tax



#BWNKMGV

#CNXX X176 3277 2647#
MICHAEL ROTHMAN
ATTN: MICHAEL J WYNNE
77 W WACKER DR
CHICAGO IL 60601-1604

October 5, 2018



Letter ID: CNXXX17632772647

Taxpayer ID: XXX-XX-
Account ID: P16873261
Audit ID: A2138552832
Reporting period: December 2015

Explanation of adjustments for tax period ending 12/31/2015

Return Impact

Tax impact

We determined your correct residency status based on Illinois law.
[35 ILCS 5/1501(a)(14), (20)]