

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

TODD CHRISTOPHER, as representative,)	
for T. CHRISTOPHER HOLDING)	
COMPANY,)	
)	
Petitioner,)	
)	
)	
)	
v.)	19 TT 131
)	20 TT 54
)	Judge Brian F. Barov
ILLINOIS DEPARTMENT)	
OF REVENUE,)	
)	
Respondent.)	

ORDER

The Department filed a motion for leave to serve in excess of 30 interrogatories, which was heard at the May 6, 2021 status conference, with all parties appearing. The motion is allowed for the reasons set forth below:

The Petitioner in this consolidated case is the personal representative of a now-dissolved holding company that realized a capital gain from the sale of a portion of its equity interests in its operating company in 2014 and another capital gain from the sale of the remainder of its equity interests in the operating company in 2016. The Department issued two Notices of Deficiency that assessed replacement tax on the capital gains for the 2014 and 2016 calendar tax years. The Petitioner has raised regulatory, statutory, and constitutional objections to the tax assessment, including that the Petitioner lacks statutory or constitutional nexus with the State adequate to allow Illinois to subject it to replacement tax.

Before the cases were consolidated, the Department served 12 written interrogatory requests on the Petitioner in the action regarding the 2014 sale. After consolidation, the Department served a second set of interrogatories directed at the

Petitioner's activities during 2014-2016 tax years and involving both sales. The Department considers the second set as consisting of 19 interrogatories, but there are 16 subparts, so viewed most favorably to the Petitioner the total for the second set is 35, which together with the first makes 47.

The Petitioner objected to the second set interrogatories on the ground they violate the 30-interrogatory limit found in Supreme Court Rule 213(c), which states:

a party shall not serve more than 30 interrogatories, including sub-parts, on any other party except upon agreement of the parties or leave of court granted upon a showing of good cause. A motion for leave of court to serve more than 30 interrogatories must be in writing and shall set forth the proposed interrogatories and the reasons establishing good cause for their use.

Ill. Sup. Ct. R. 213(c).

As required by the rule, the Department has filed a written motion for leave to serve in excess of 30 interrogatories. It first argues that it can serve the second set of interrogatories because the two consolidated cases did not fully merge into one, relying on the Supreme Court case of *Hall v. Hall*, 138 S. Ct. 1118 (2018).

The *Hall* case does not solve the Department's problem for a couple of reasons. First, *Hall* did not involve a discovery question, it held that the federal rule governing consolidation did not preclude the appeal of a final judgment on one claim in a consolidated case while another remained pending. *Id.* at 1130-31. Illinois's approach is similar, although a bit more nuanced; courts here look to the nature of the consolidation to determine whether actions merge, and judgments are appealable. *See In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 657 (1st Dist. 2009).

Moreover, Rule 213(c) refers to parties not actions. It states that "*a party shall not serve more than 30 interrogatories, including sub-parts, on any other party.*" Ill. Sup. Ct. Rule 213(c). But whether this case is considered as two separate actions or the Petitioner is considered as two separate parties, the 19

interrogatories and 16 subparts of the second set still violate the 30-interrogatory limit.

The better argument, which the Department also advances, is that it had “good cause” to propound more than 30 interrogatories. Dep’t Mot. at 4. The purpose of Rule 213(c) is to prevent attorneys from “submitting needless, repetitious, and burdensome interrogatories.” *Id.*, Committee Comments. Thus, a more suitable standard for reviewing the Department’s motion is to ask whether allowing it to serve more than 30 interrogatories places an undue burden on the Petitioner. *See Morrow v. Pappas*, 2017 IL App (3d) 160393, ¶ 33.

Questions of taxable nexus are generally fact intensive. *See, e.g., A.B. Dick v. McGraw*, 287 Ill. App. 3d 230 (4th Dist. 1997). This case is no exception. The Department’s first set of interrogatories sought information about the Petitioner’s relationship with the entities involved here during the first tax period in issue. The second set of interrogatories seeks information regarding the Petitioner and the transactions in question for the 2014-16 calendar years. The second set of interrogatories, whether considered alone or together with the first, do not appear overly burdensome on their face, and the Petitioner has not provided a convincing reason why they are. The Petitioner is not foreclosed from raising the usual objections to specific interrogatories.

Accordingly, it is ORDERED that:

- 1) the Department’s motion for leave to serve in excess of 30 interrogatories is GRANTED;
- 2) the Petitioner’s responses to the Department’s second set of interrogatories are due to be served on or before June 7, 2021; and
- 3) the case is reset for a telephone status conference on June 24, 2021, at 10:00 a.m.

s/ Brian Barov
BRIAN F. BAROV
Administrative Law Judge

Date: May 7, 2021