

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>JAMES E. &amp; DOROTHY J. CORBIN</b>	)	
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	)	<b>14-TT-9</b>
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<b>STATE OF ILLINOIS</b>	)	<b>Judge Brian F. Barov</b>
<b>DEPARTMENT OF REVENUE</b>	)	

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**DEPARTMENT’S REPLY BRIEF TO PETITIONER’S RESPONSE  
TO DEPARTMENT’S CROSS MOTION FOR SUMMARY JUDGMENT**

Respondent, Illinois Department of Revenue, through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, files this Brief in Reply to Petitioner’s Response to Department’s Cross Motion for Summary Judgment pursuant to Section 2-1005 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005.

Case Law

It is true that the Illinois case law on the issue of residency generally does not favor the Respondent in this case. That does not alter this case as a fact driven issue and the totality of the facts must be examined. There is no case law holding that once an individual changes his state residency he cannot change his mind and change the residency back to the original state of residency within a year or two. There is no case law holding that an individual cannot change his state residency mid-year. There is no case law holding that when an individual changes his residency from one state to another, he must cut all ties to the first state, selling all real estate and not maintaining any personal means of transportation in the first state. It is evident that the Petitioners are a wealthy couple, and they can afford to maintain houses for their personal use in both states since they anticipate traveling back and forth between the two states. Just as Petitioners can afford to maintain houses in both states they can also afford to maintain

automobiles in both states for their use and convenience. The Court must examine the facts in their totality as the Respondent will do in the next section of this brief.

Change of Residence on May 1, 2001

The evidence establishes that at some time during the year 2000, Petitioners decided that their permanent move to Florida was a mistake, and they decided to move back to Woodstock, Illinois while maintaining a secondary home in Florida that would be close to James' parent's home in West Palm Beach and would serve as a vacation home for the Petitioners.

*Real Estate Transactions:* In the fall of 1999 the Petitioners purchased a house in Jupiter, Florida and sold their home in Woodstock, Illinois, and at the end of 1999 the Petitioners owned no real estate in Illinois. On October 2, 2000 Petitioners purchased a house in Woodstock, Illinois and leased it back to the sellers with a short-term lease that ended March 31, 2001. This is evidence that Petitioners had a change-of-heart about moving to Florida. If they wanted a second house in Illinois, why did they sell their original house in Woodstock?

On December 28, 2001 Petitioners purchased a house in West Palm Beach, Florida, not far from the house they purchased for James' parents. Petitioner argues that the new Woodstock house is larger than the house in West Palm Beach because real estate is cheaper in Woodstock. No doubt that the real estate dollar goes farther in Woodstock than West Palm Beach, but that does not require Petitioner to purchase a larger house in Woodstock on a significantly larger piece of real estate (10,637 square feet of land in West Palm Beach versus two acres in Woodstock). They could have saved their money and purchased a house in Woodstock for significantly less money, and purchased a "vacation" home that was significantly easier to maintain. Attached as Department's Motion Exhibit No 11 is a picture of Petitioner's house in West Palm

Beach and Department's Motion Exhibit No 12 is a picture of their house in Woodstock purchased in 2000, Illinois, these pictures were provided by Petitioner through discovery. At some point after 2001 Petitioners sold their home in Woodstock and purchased the Woodstock house they originally sold in 1999.

*May 1, 2001 Marked the Beginning of Petitioner's Illinois Residency:* Petitioners took possession of the house in Woodstock, Illinois on May 1, 2001 and stayed in Illinois for 17 days. Department's Motion Exhibit No. 9. Petitioners spent \$8,856 on the Woodstock house between April and December 2001 and an additional \$15,038 on membership and activities at the Bull Valley Golf Club in Woodstock during the period of May 2001 through December 2001. It is clear that Petitioner transferred their residence from Florida to Illinois at some point, but the question is when. Petitioner wants to postpone the date as long as possible because Illinois has an income Tax and Florida does not. Petitioner points out that they filed a Florida Intangible Personal Property Tax return that was a tax on intangible personal property held on January 1, 2001, but have failed to produce a copy of this Florida tax return for intangible personal property held by Petitioner on January 1, 2002.

*Automobile Ownership and Insurance:* Petitioner makes a point of the fact that James insured his automobile in Florida during 2001, and Dorothy purchased a Lexus in Florida in March of 2001. Petitioners were a wealthy couple and they owned homes in Florida and Illinois; it is not surprising that they would want to own vehicles for their personal use at both locations.

*Medical Records:* James Corbin had a serious medical problem and he could, and did, seek medical treatment in Florida and Illinois. Petitioner traveled frequently between the two states and sought out the best treatment convenient to where he happened to be. Petitioner observes that he spent the month of July 2001 in Florida, one of the hottest

months in that state. The fact is Petitioners spent 19 days in Florida in July 2001, but they spent 23 days in Illinois in December 2001. Department's Motion Exhibit No. 9.

*Voting Record:* There is no doubt that Petitioners registered to vote in Florida in 1999, but 2001 was not an election year. No evidence in the record indicates that Petitioners voted in Florida after 2001. James Corbin states in his affidavit that he was registered to vote in Florida during 2001, but that proves little other than he failed to revoke his registration. Taxpayer points to no document in Petitioner's original brief nor in the Reply Brief that states that Petitioners voted in Florida after 2001.

*Conclusion:* James Corbin states in his affidavit that he did not intend to change his residency to Illinois during 2001, but the affidavit is self-serving, after the fact, and it is not subject to cross examination. Actions speak louder than words and Petitioner's actions during 2001 indicate a change in residency to Illinois on May 1, 2001. Petitioners took possession of their Woodstock home on May 1, 2001 after the sellers/tenants moved out. Petitioners spent a great deal of money renovating the Woodstock home from May to December 2001 and they spent even more money on a golf country club in Woodstock during 2001. While Petitioners spent 51% of their time in Florida during the whole of 2001, but their travel pattern shifted dramatically from May 1<sup>st</sup> to the end of the year when Petitioners spent 64% of their time in Illinois and 33% of their time in Florida. It is interesting to note that Petitioners spent the first 93 days of the year in Florida; after May 1<sup>st</sup> the longest period that that they spent in one state was 55 days in Illinois.

At some point after 2001 Petitioners sold their Woodstock home on 9804 Autumn Lane that was purchased in 2000 and purchased and moved to their current address at 1410 Galloway Drive, Woodstock, Illinois, back into their home that they sold in 1999. But on May 1, 2001 the Petitioners had come home to Woodstock, Illinois.

Respectfully Submitted,

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