

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

JAMES E. AND DOROTHY J. CORBIN,)	
)	14-TT-9
Petitioners)	
Vs.)	
)	Judge Brian F. Barov
THE STATE OF ILLINOIS)	Administrative Law Judge
DEPARTMENT OF REVENUE, Respondent.)	

MOTION FOR SUMMARY JUDGMENT

NOW COME the Petitioners, JAMES E. AND DOROTHY J. CORBIN, by their attorney, EUGENE B. LEVIN, and move the Court, pursuant to Section 2-1005 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005, for entry of summary judgment granting the request in Section 9 of the Petition that the Notice of Deficiency issued by the Department on April 9, 2013 be revoked, and all assessments, interest and penalties for 2001 be removed from Petitioners' account. In support of this Motion for Summary Judgment, the Petitioners state the following:

- 1) Respondent issued a Notice of Deficiency dated April 9, 2013 which assessed additional income tax, interest and penalties against Petitioners for the year 2001. The Notice was based on the Department's determination that Petitioners became residents of Illinois, and were no longer residents of Florida, on May 1, 2001.
- 2) The parties agreed to certain uncontested facts and they stipulated to the admission of certain non-objected to Exhibits in a Final Pretrial Order on 1/15/2015. These stipulated facts and Exhibits are made part of this Motion by reference thereto.
- 3) Petitioners purchased their house at 132 West Village Way, Jupiter, FL on 9/27/1999. They lived there until they sold the house on 9/14/2001.
- 4) Petitioners purchased their residence at 7904 Sandhill Ct, West Palm Beach, FL on 12/28/2001.
- 5) Petitioners looked at several homes to purchase in Florida during the spring and summer of 2001. They delayed the closing on the 7904 Sandhill Ct home at the request of the seller, because of seller's terminal illness. See attached Affidavit of James E. Corbin.
- 6) Petitioners filed a 2001 Florida Intangible Personal Property Tax Return, dated 7/2/2001. This tax form is required of residents of Florida and indicates that Petitioners were residents of Florida during 2001.
- 7) Petitioners registered to vote in Florida during 1999, and they did not vote in Illinois from that time until at least 2006. Their voting record in Florida, and their lack of voting in Illinois, indicates that Petitioners were residents of Florida during 2001.
- 8) Petitioner James E. Corbin insured his automobile with the R Limegrover Insurance Agency in Boca Raton, FL from 11/3/1999 to 3/2/2002. Petitioner's insuring his Florida-registered automobile with a Florida insurance agent throughout 2001 indicates his Florida residency in 2001.
- 9) Petitioner Dorothy Corbin purchased a new Lexus, in Florida, on 3/20/2001. She also insured it with the Boca Raton, FL insurance agency from 3/21/2001 to 3/21/2002. Her purchase of a new

automobile in Florida during 2001, and her insuring it in Florida throughout 2001, indicates her residency was in Florida throughout 2001.

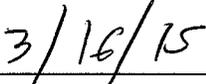
- 10) Petitioners purchased a house at 7764 Olympia Drive, West Palm Beach, FL on 7/15/1999. Petitioner James Corbin's parents lived there from 1999, throughout 2001 and many years later. Petitioner's ownership of this property, and the proximity of his residence to his parents' residence, indicate that Petitioners were residents of Florida during 2001.
- 11) Petitioners executed a "Declaration of Domicile", dated 2/28/2000 and recorded by the Palm Beach County FL clerk on 3/3/2000, which indicated that they had changed their domicile from Illinois to their Florida home.
- 12) The evidence of record before this Court establishes that the Petitioners were residents of Florida for the entire year of 2001. The agreed, uncontested facts show that the Petitioners were present in Florida more than 183 days in 2001. Their voter registration, car registration, car insurance and state tax filings indicated their intent to be residents of Florida during 2001.
- 13) The parties agree that the Petitioners were residents of Florida from January 1, 2000 through April 30, 2001. There is no evidence of any event which happened on April 30, 2001 which changed Petitioners' residency from Florida to Illinois on that date. The Auditor's Report and the Department's Notice of Deficiency fail to set forth any facts on which the determination of an April 30, 2001 change of residency can be based.
- 14) On January 29, 2002, Dr. Barry Bikshorn sent a letter to Dr. Stewart Segal which stated, in part, "James Corbin returned to my office. . . In July 2001, he had some sort of cortisone shot in the lower back done by a neurologist in Florida." This is a medical record which indicates Petitioner was in Florida during the summer of 2001, after the Department claims he was no longer a resident of Florida, receiving medical treatment. Petitioner's medical treatment in Florida during the summer of 2001 indicates he was a resident of Florida during 2001.
- 15) On August 8, 2002 Dr. Barry Bikshorn sent another letter to Dr. Stewart Segal. This letter states, "He (James Corbin) is "up north" from Florida for only a few months." The last line of the Dr's letter states, "He plans on returning back to Florida in October and will be there until next summer." This medical record demonstrates that Petitioner James Corbin indicated his intention to return to Florida and live there for more than 6 months. This indicates that his intent was to be a resident of Florida.
- 16) Petitioner's Memorandum of Law is submitted in support of this Motion, and is filed contemporaneously herewith.

WHEREFORE, the Petitioners JAMES E. AND DOROTHY J. CORBIN respectfully request this Court to issue an Order granting Summary Judgment in Petitioners' favor, and against the Respondent, that Petitioners were residents of Florida throughout 2001 and that the Notice of Deficiency issued by the Department on April 9, 2013 is revoked, and all assessments, interest and penalties for 2001 shall be removed from Petitioners' account.

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Eugene B. Levin



Date

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CHICAGO, ILLINOIS**

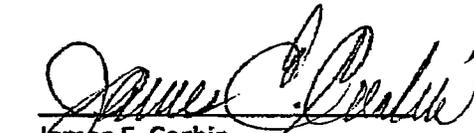
JAMES E. AND DOROTHY J. CORBIN, Petitioners)	14-TT-9
Vs.)	
THE STATE OF ILLINOIS DEPARTMENT OF REVENUE, Respondent.)	Judge Brian F. Barov Administrative Law Judge

**AFFIDAVIT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT BY PETITIONER, JAMES E. CORBIN**

I, JAMES E. CORBIN, on oath state:

- 1) I am over the age of 18 and I am a resident of the State of Illinois, County of McHenry. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.
- 2) During the entire year of 2001 I was a resident of Florida and I intended to remain a resident of Florida throughout that year.
- 3) I purchased my home at 132 W. Village Way, Jupiter, FL on 9/27/1999.
- 4) I lived in my Jupiter FL home, as my principal residence, until I sold it on 9/14/2001.
- 5) My wife and I desired to downsize our Florida home and we looked at several Florida homes during 2001 to see if a smaller home was available.
- 6) We decided to make an offer on the home at 7904 Sandhill Ct., West Palm Beach, FL, which was owned by Mr. and Mrs. Harris.
- 7) The Harris's requested that we delay the closing until 12/28/2001 as Mr. Harris was dying of cancer.
- 8) We agreed, and we purchased the home at 7904 Sandhill Ct., West Palm Beach, FL on 12/28/2001.
- 9) During 2001 I made several medical visits to physicians in Illinois. I also vacationed in Illinois and visited friends.
- 10) Throughout 2001 I maintained my Driver's License, Voter's Registration and automobile insurance in Florida.
- 11) I filed a Florida Intangible Personal Property Tax Return, Form DR6011, stating that I was a resident of Florida, on 7/02/2001.
- 12) I was physically present in Florida for 186 days in 2001.
- 13) Throughout 2001 I also owned another home in Florida, at 7764 Olympia Drive, West Palm Beach, Florida, where my parents resided.

Under penalties as provided by Illinois law, the undersigned certifies and swears that the statements set forth in this instrument are true and correct.

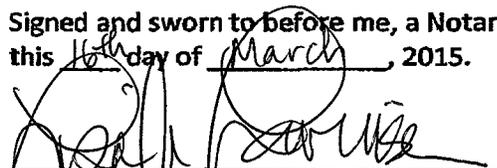


 James E. Corbin

 3/16/15

 Date

Signed and sworn to before me, a Notary Public, of Cook County, Illinois, by James E. Corbin,
 this 16th day of March, 2015.



 Notary Public



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also had maintained relationships with Illinois doctors and visited them regularly. The Circuit Court ruled that the Cains were "mere seasonal visitors" of Illinois, and not residents, despite their spending an average of over 160 days each year in Illinois during the 9 years at issue. The Petitioners in the present case spent a majority of their days in 2001 in Florida. They, like the Cains, were mere seasonal visitors to Illinois.

III. The Case of Dods v. Hamer, 1-09-2548 (1st District 8/19/10) ("Dods") Shows that Petitioners Can Own A Home In Illinois While Being A Florida Resident

In Dods, the taxpayers owned 3 homes, one in Illinois, one in Michigan and one in Florida. In that case, the husband also had operated a business in Illinois. Dods registered to vote in Florida and obtained a Florida Driver's License. They spent January to May in Florida and then May through September in Illinois each year. They also visited Illinois for 2 weeks during the holiday season. They also had a vehicle registered in Illinois and they continued to receive mail in Illinois. Despite these facts, which are considerably more pro-Illinois than the Corbin's situation, the Court held that the Dods family was not residents of Illinois. Also, there was no medical reasons for the Dods family to be in Illinois as is the case with the Corbins.

The Respondent cannot produce any case which supports their theory of this case, that Petitioners became a resident of Illinois on May 1, 2001. The Petitioner's situation, in fact, is stronger than the facts in the cases which have held that taxpayers with homes in both Illinois and Florida were not Illinois residents. As the law, and the facts, support Petitioners, the Motion for Summary Judgment should be granted.

Respectfully submitted,

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