

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

JAMES and DOROTHY CORBIN,)	
Petitioners,)	
v.)	14 TT 9
)	Judge Brian F. Barov
THE STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE,)	
Respondent.)	

ORDER

The Petitioners have filed a motion seeking to compel the deposition of Sandra Scott, an employee of the Department of Revenue. Scott participated in the proceedings before the Department’s Informal Conference Board (“ICB”), the body that reviewed Petitioners’ tax claim prior to filing the petition now before the Tribunal. For the reason set forth below, the motion is denied.

Background

The Petitioners challenge the Department’s Notice of Deficiency, issued after an audit, assessing additional Illinois income tax against them on the ground that they were part-year residents of Illinois for the tax period ending December 2001. The Petitioners allege that for the entire tax period in question they were Florida residents. According to Petitioners, throughout 2001, they maintained Florida driver’s licenses and Florida voter’s registration, and were physically present in

Florida. Further, they allege that while they sold their Florida residence in September 2001, they purchased a new one in December 2001. Any time that they spent in Illinois in 2001 was allegedly time spent on vacation or on medical visits.

Prior to filing their petition, the Petitioners challenged the Department's tax claim in the ICB. The ICB is a division of the Department that provides for informal review of proposed audit adjustments before a Notice of Deficiency is issued. 86 Ill. Admin. Code § 215.100. It functions as a mechanism for addressing tax disputes before the formal administrative process commences. *Id.* The Department considers the ICB the "first step" in resolving tax disputes. 86 Ill. Admin. Code § 215.120(a).

Petitioners seek to depose Scott on the ground that she led the ICB hearing in this case; conducted an investigation into the facts of this case before and after the hearing; acted as "judge, jury member, independent investigator, negotiator, mediator or fact-finder;" and "made inquiries, including emails and telephone calls (and possibly research) to determine the facts in the instant case." Mot. ¶¶ 6,7; *see also* Reply ¶ 5. The Department responds that Scott was not a member of the ICB, rather she was only a "conferee." Dep't Resp. ¶ 2. As such, she organized the conference, but did not lead it. *Id.* Moreover, whatever limited role Scott had in drafting ICB recommendations, or in discussing a potential settlement with a taxpayer, she was not a decisionmaker. *Id.* ¶ 3,5. Finally, the Department asserts that under the Department's rules, information presented to the ICB is not discoverable in proceedings before another adjudicatory body. *Id.* at ¶¶ 7,8

Analysis

While courts should afford parties “[g]reat latitude” in conducting discovery, *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 556-57 (1st Dist. 1998), discovery not relevant to the issues in contention should not be allowed, *id.* at 557; *see also Vill. of Woodridge v. Bd. of Educ. of Cmty. High Sch. Dist. 99*, 403 Ill. App. 3d 559, 574-75 (2nd Dist. 2010). The underlying issue here is whether the Petitioners were part-year Illinois residents during the tax period in question. Petitioners’ residency will depend upon whether their presence in Illinois during the tax period was intended to establish a permanent domicile here or whether it was merely temporary or transitory. *See Cain v. Hamer*, 2012 IL App (1st) 112833, 17-23 (1st Dist. 2012). This inquiry will, in-turn, depend upon the facts showing their respective connections with Illinois and Florida. *See id.*

In seeking Scott’s deposition, the Petitioners’ focus on her role in the ICB proceeding. But this approach is misdirected. Regardless of her role at the ICB, Petitioners have not shown what specific first-hand information Scott possesses relevant to their respective Illinois and Florida connections. Because they did not show that Scott possesses relevant information, the Petitioners’ have not provided a basis to depose her. *See TTX Co.*, 295 Ill. App. 3d at 557-58; *see also Vill. of Woodridge*, 403 Ill. App. 3d at 574-75.

Even assuming Petitioners accurately describe Scott’s role in the ICB’s decision making, their case for deposing her is no better. As a general matter, courts do not permit examination of the thought processes of administrative

decisionmakers. *See City of Des Plaines v. Metro. Sanitary Dist. of Chi.*, 552 F.2d 736, 739-40 (7th Cir. 1976). The basis of the ICB decision is not a fact relevant to this case.

Moreover, under the Department's regulations, "documentation or information submitted to the ICB does not become part of any formal record and cannot be forwarded to any other agency or judicial body for purposes of that body making a determination on the merits of any case." 86 Ill. Admin. Code § 215.120(c). Petitioners cannot circumvent this bar on the use of ICB records in other proceedings by taking Scott's deposition here.

Finally, Petitioners refer to the public policy of transparency embodied in the Illinois Freedom of Information Act, 5 ILCS 140/1 (2014), in support of their motion. Reply ¶¶ 1,2. But nothing in this decision affects Petitioners' rights under the FOIA, nor does FOIA address the issue of the relevancy of Scott's deposition testimony.

For all of these reasons, the Petitioner's motion to compel Sandra Scott's deposition must be DENIED.

s/ Brian Barov
BRIAN F. BAROV
Administrative Law Judge

Date: October 27, 2014