

**IT 15-02**

**Tax Type: Income Tax**

**Tax Issue: Income Tax Foreign Tax Credit**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

---

---

<b>THE DEPARTMENT OF REVENUE</b>	)	<b>XXXX</b>
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Foreign Tax Credit</b>
	)	
<b>v.</b>	)	
	)	
<b>JOHN &amp; JANE DOE,</b>	)	<b>Kelly K. Yi</b>
<b>TAXPAYERS</b>	)	<b>Administrative Law Judge</b>

---

---

**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Ronald Foreman and Mr. Jonathan Pope, Special Assistant Attorneys General, for the Department of Revenue of the State of Illinois; Mr. Thomas F. McGuire of Arstein & Lehr LLP, on behalf of John and Jane Doe.

**Synopsis:**

On November 18, 2013, the Department of Revenue of the State of Illinois (“Department”) issued a Notice of Claim Denial to John and Jane Doe (“Taxpayers”) denying a foreign tax credit claimed in their 2011 Individual Income tax return (“IL-1040”) under Section 601(b)(3) of the Illinois Income Tax Act (“IITA”). Taxpayers protested the Department’s decision and requested an administrative hearing. In lieu of a hearing, the parties subsequently submitted “Agreed Stipulation of Facts and Waiver of Evidentiary Hearing” (“Stipulation”), along with Joint Exhibits 1-9. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. The following Findings of Fact and Conclusions of Law are made in support of this recommendation.

**Stipulated Facts Not In Dispute:**

1. The Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's Notice of Claim Denial issued to Taxpayers on November 18, 2013. Joint Ex. 4.
2. Taxpayers timely filed a 2011 Individual Income Tax Return, married filing jointly ("IL-1040"). Taxpayers were full-time residents of the State of Illinois during calendar year 2011. Taxpayers therefore reported the entire amount of wages and other taxable income on IL-1040, resulting in a computation of Illinois income tax, before credits, of \$XXXX, and a total overpayment of \$XXXX on Line 35. Stipulation p. 2, #1; Joint Ex. 1.
3. Taxpayers likewise filed a non-resident New York income tax return (Form IT-203) for calendar year 2011 which reported \$XXXX of wages as being taxable in New York, resulting in a New York income tax liability of \$XXXX. Stipulation p. 2, #2; Joint Ex. 2.
4. On or about June 4, 2013, Taxpayers filed a 2011 Amended Individual Income Tax Return ("IL-1040-X") claiming, in relevant part, a credit of \$XXXX from Schedule CR and on Line 17 of IL-1040-X, resulting in a total overpayment on Line 32 of \$XXXX. Stipulation p. 2, #3; Joint Ex. 3.
5. On or about November 18, 2013, the Department issued Taxpayers a Notice of Claim Denial in response to IL-1040-X ("Notice"). Joint Ex. 4. The Notice disallowed the credit on Line 17, for taxes paid to New York, decreasing the credit amount from \$XXXX to \$0. As a result of the change, the Department calculated a liability, including penalty and interest, of \$XXXX. Stipulation p. 2, #4; Joint Ex. 4.

6. On December 6, 2013, Taxpayers timely filed a Protest for Income Tax (“Protest”). In support of their Protest, Taxpayers submitted the same documents now marked Joint Exhibit 1-9. Stipulation p. 2, #5; Joint Exs. 1-9.
7. Mr. John Doe (“Mr. John Doe”) was and continues to be employed as an investment banker. Stipulation p. 2, #6.
8. During calendar year 2011, Mr. John Doe was employed through May 5 by ABC Business LLC (“ABC Business”) and by XYZ Business Inc. (“XYZ Business”) from July 1 through the duration of the year. Stipulation p. 2, #7.
9. For both of the foregoing jobs, Illinois was Mr. John Doe’s base of operations. The nature of Mr. John Doe’s occupation required him to spend 47 days in 2011 working in the State of New York; 21 days with ABC Business and 26 days with XYZ Business. Both employers withheld both Illinois and New York income tax from Mr. John Doe’s salary. Stipulation p. 2, #8; Joint Exs. 8-9.
10. Mr. John Doe’s wages and other taxable compensation from ABC Business for 2011 as reflected on his Form W-2 was \$XXXX. Of these earnings, Illinois held \$XXXX in income tax and New York withheld \$XXXX in income tax. Stipulation p. 2, #9; Joint Ex. 7.
11. Mr. John Doe’s wages and other taxable compensation from XYZ Business for 2011 as reflected on his Form W-2 was \$XXXX. Of these earnings, Illinois held \$XXXX in income tax and New York withheld \$XXXX in income tax. Joint Stipulation p. 2, #10; Joint Ex. 7.
12. One Line 17 of IL-1040-X and Line 55 of 2011 Schedule CR, Taxpayers claimed a “credit for taxes paid to other states” in the amount of \$XXXX. This result was based upon Mr. John Doe’s computations from his records and information provided by his employer that approximately 16% of his time was spent working in the State of New York in 2011,

resulting in \$XXXX of his wages and other income from employment being allocated to New York on Column B on Schedule CR. Stipulation, p. 3, #11; Joint Exs. 3, 8-9.

13. Taxpayers seek an increase on Line 17 of IL-1040-X for the entire amount of the claimed credit for taxes paid to the State of New York in the amount of \$XXXX, ultimately resulting in a claimed overpayment of \$XXXX on Line 32, plus interest and abatement of any penalties. Stipulation, p. 3, #12; Joint Exs. 4-5.

### **Conclusions of Law:**

Section 201(a) of the Illinois Income Tax Act (“IITA”)<sup>1</sup> (35 ILCS 5/201(a)) imposes a tax measured by net income on every, individual, corporation, trust and estate for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income or as a resident of this State. A taxpayer’s net income for a taxable year is defined as “that portion of his base income for such year which is allocable to this State under the provisions of Article 3, less the standard exemption allowed by Section 204 and the deduction allowed by Section 207.” 35 ILCS 5/202.

Article 3 of the IITA (35 ILCS 5/101 *et. seq.*) governs “Allocation and Apportionment of Base Income” which, in relevant part, states:

Section 301. General Rule.

- (a) Residents. All items of income or deduction which were taken into account in the computation of base income for the taxable year by a resident shall be allocated to this State.

Section 302. Compensation paid to nonresidents.

- (a) In general. All items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocated to this State.

Section 304(a)(2)(B) Compensation is paid in this State if:

---

<sup>1</sup> All sections of statutes cited or referenced in the recommendation refer to IITA.

- (i) The individual's service is performed entirely within this State;
- (ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or
- (iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

Section 601(b)(3) of Article 6 of the IITA governs foreign tax credit:

(3) Foreign Tax. The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. **For taxable years ending prior to December 31, 2009**, the aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year. **For taxable years ending on or after December 31, 2009, the credit provided under this paragraph for tax paid to other states shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act bears to the taxpayer's total base income subject to tax by this State for the taxable year.** The credit provided by this paragraph shall not be allowed if any creditable tax was deducted in determining base income for the taxable year. Any person claiming such credit shall attach a statement in support thereof and shall notify the Director of any refund or reductions in the amount of tax claimed as a credit hereunder all in such manner and at such time as the Department shall by regulations prescribe. 35 ILCS 5/601(b)(3) (emphasis added represents the language added pursuant to Public Act 096-0468, effective August 14, 2009)

The Department argues that Taxpayers are not entitled to a foreign tax credit under

Section 601(b)(3) for nonresident income tax paid to the State of New York (“New York”) in the year 2011 because the foreign tax credit is limited to the equal amount of Illinois income tax attributable to the income sourced outside Illinois using the Article 3 allocation and apportionment provisions. It argues that under the Article 3 provisions, none of Mr. John Doe’s

2011 income was sourced outside Illinois. Taxpayers, in turn, argue that they are entitled to a foreign tax credit on the base income taxed by both states (Illinois and New York), minus deductions, provided that the foreign tax credit does not exceed their 2011 Illinois income tax otherwise due. In support, they cite Section 601(b)(3) as follows:

(3) Foreign Tax. The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. The aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year. The credit provided by this paragraph shall not be allowed if any creditable tax was deducted in determining base income for the taxable year. Any person claiming such credit shall attach a statement in support thereof and shall notify the Director of any refund or reductions in the amount of tax claimed as a credit hereunder all in such manner and at such time as the Department shall by regulations prescribe. 35 ILCS 5/601(b)(3). Taxpayers' brief, p. 4

One can readily discern that there are critical differences between the two cited versions of Section 601(b)(3). Taxpayers' version omits the exact statutory language added pursuant to P.A. 096-0468 in which the legislature significantly modified the method of foreign tax credit computation for taxable years **ending on or after** December 31, 2009. The full version clearly distinguishes the method of credit computation between the taxable years **ending prior to and on or after** December 31, 2009. There is no such distinction in Taxpayers' version. A comparison of the two versions shows that Taxpayers' argument is based on the statutory language applicable to the taxable years ending **prior to** December 31, 2009, whereas the taxable year at issue is 2011. Thus, Taxpayers' argument is without merit.

The statutory language of Section 601(b)(3) ("language at issue") governing the taxable year at issue is as follows:

For taxable years ending on or after December 31, 2009, **the credit provided under this paragraph for tax paid to other states shall not exceed** that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as **the amount of the taxpayer's base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act** bears to the taxpayer's total base income subject to tax by this State for the taxable year. (emphasis added)

Under this statute, Taxpayers are allowed a foreign tax credit for income tax paid to New York, not exceeding their 2011 Illinois income tax otherwise due, on the base income apportioned to New York according to the Article 3 provisions. In other words, the foreign credit limitation is equal to the amount of Illinois income tax attributable to the income sourced outside Illinois using the allocation and apportionment provisions in Article 3. In application of the Article 3 provisions, the Department argues that Section 601(b)(3) deems that all other states apply the Illinois Article 3 provisions. I agree. The language at issue highlighted in bold states that “the credit provided under this paragraph for tax paid to other states shall not exceed” Illinois income tax otherwise due on “the taxpayer’s base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act.” This statutory language enables the application of the Article 3 provisions from the perspective of an adopting state, so, in the instant case, the “Residents” in Section 301 becomes “Residents of New York,” and “Compensation paid to nonresidents” in Section 302 becomes “Compensation paid to nonresidents of New York,” thus, residents of Illinois. Department’s brief, p. 2. As applied to Taxpayers, compensation is paid in New York if one of three conditions are satisfied under Section 304(a)(2)(B):

- (i) The individual's service is performed entirely within this State;
- (ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or

(iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

The Department argues that no portion of Mr. John Doe's 2011 income was sourced to New York under Section 304(a)(2)(B) because, as the stipulated facts show, Mr. John Doe's services were only partially performed in New York (47 days in 2011), incidental to the services performed in his base of operations, Illinois. Stipulation # 8, #11. I agree. The stipulated facts show that 100% of Mr. John Doe's income was sourced to Illinois under the sourcing provisions of the Article 3, Sections 302 and 304(a)(2)(B).

Taxpayers disagree. They argue that as full time residents of Illinois, only the statutes pertaining to Illinois residents are applicable to them. They argue that Sections 302 and 304 apply only to nonresidents of Illinois, thus the provisions are inapplicable to them and the Department's arguments must fail.<sup>2</sup> In support of their argument, Taxpayers point to Sections 302 and 304, titled "Compensation Paid to Nonresidents" and "Business Income of Persons Other Than Residents," respectively. Taxpayers' brief, p. 3. Taxpayers' point is facially correct, but only if the sections are separately read, independent of Section 601(b)(3). Section 601(b)(3) attests that foreign tax credit is to be computed on the base income apportioned to the other states according to the Article 3 provisions, not a specific provision but provisions, as in plural. It does not in any manner limit applicability of the Article 3 provisions under Section 601(b)(3). Taxpayers' argument is not persuasive.

Section 100.3120 of the Department regulation, adopted under Section 302, which speaks to the Department's application of Section 304(a)(2)(B) in general, is instructive as well. It states

---

<sup>2</sup> Taxpayers, however, do not argue that these sections are inapplicable under Section 601(b)(3) as they neither cite nor recognize applicability of Section 601(b)(3) language at issue. *See* Taxpayers' brief, p. 3.

that the conditions constituting compensation paid in Illinois under 304(a)(2)(B) are “to be applied in such manner that if they were in effect in other states an item of compensation would constitute compensation ‘paid in’ only one state.” 86 Ill.Admin.Code 100.3120; amended at 25 Ill. Reg. 6687, effective May 9, 2001. This is consistent with the Department’s argument that Sections 302 and 304 are to be applied from the perspective of other states that deemed to have adopted the sourcing provisions. An agency’s interpretation of its regulations and enabling statute are “entitled to substantial weight and deference,” given that “agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature’s intent.” Provena Covenant Medical Center v. Department of Revenue, 236 Ill.2d 368, 387, 339 Ill.Dec. 10, 925 N.E.2d 1131 (2010). In giving substantial weight and deference to the Department’s interpretation of Section 302, I conclude that this, along with the plain language of Section 601(b)(3), dictates a finding that all provisions of the Article 3 apply to Illinois residents under Section 601(b)(3).

Taxpayers argue that there would be no dispute if the taxable year at issue had occurred prior to January 1, 2006. Taxpayers’ brief, pp. 10-11. In support, they cite subsections of the Department regulation Section 100.2197, adopted under Section 601(b)(3), which, in relevant part, state:

Section 100.2197(b)(4)(E)

For taxable years beginning prior to January 1, 2006, compensation paid in Illinois under IITA Section 304(a)(2)(B), as further explained in Section 100.3120 of this Part, is not included in double-taxed income, even if another state taxes such compensation. For example, an Illinois resident whose base of operations is in Illinois, but whose employment requires him or her to work in Illinois and for a substantial period of time in State Z, must treat all compensation from such employment as paid in Illinois under IITA Section 304(a)(2)(B)(iii). None of that compensation may be included in double-taxed income, even if State Z actually taxes the compensation earned for periods during which the resident was working in State Z. **Public Act 94-247 (effective January 1, 2006) repealed the provision in IITA Section 601(b)(3) that stated compensation paid in Illinois may not be included in double-taxed income, and so compensation paid in Illinois may be included in double-taxed income in taxable years**

**beginning on or after January 1, 2006.** (emphasis added in Taxpayers' brief). 86 Ill. Admin. Code 100.2197(b)(4)(E), amended at 32 Ill. Reg. 1407, effective January 17, 2008.

Section 100.2197(d)

Limitations on the amount of credit allowed. The aggregate credit allowed under IITA Section 601(b)(3) shall not exceed that amount which bears the same ratio to the tax imposed by IITA Section 201(a) and (b) otherwise due as the amount the taxpayer's based income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year. (IITA Section 601(b)(3)) The credit allowed under this Section is therefore the smaller of either the total amount of taxes paid to other states for the year or the product of Illinois income tax otherwise due (before taking into account any Article 3 credit or the foreign tax credit allowed under IITA Section 601(b)(3)) multiplied by a fraction equal to the aggregate amount of the taxpayer's double-taxed income, divided by the taxpayer's Illinois base income. 86 Ill. Admin. Code 100.2197(d)

Taxpayers argue that because of the repealed provision in Section 601(b)(3), effective January 1, 2006, they are entitled to a foreign tax credit of double-taxed income illustrated in Example 3 in the Department regulation Section 100.2197(b)(4)(G). 86 Ill. Admin. Code 100.2197(b)(4)(G). They argue that their "double-taxed income" based on Example 3, is \$13,992, which is the \$281,286, total of all items taxed by both states (Illinois and New York), minus deductions allowed by both states, multiplied by 15.6%<sup>3</sup> (\$281,286 in wages taxed by both states, divided by the \$1,804,410 in federal adjusted gross income). Taxpayers' brief, p. 11.

There are problems with this argument. As the Department points out, Section 100.2197 of the Department regulation was last amended in January 2008, prior to the most recent amendment to Section 601(b)(3), effective August 14, 2009. The analysis is identical to the reasoning outlined in the discussion earlier of the two versions of Section 601(b)(3). Akin to Taxpayer's version of 601(b)(3), the Department regulation Section 100.2197 does not reflect the statutory language at issue in which the legislature inserted the additional language to change the method of computing the maximum allowable credit paid to other states for taxable years **ending on or after** December 31, 2009. There is no distinction in the Department regulation on the

---

<sup>3</sup> The \$281,286 is equivalent to 15.6% of Mr. John Doe's 2011 income, representing 47 days he has worked in New York in 2011.

method of foreign credit computation between the taxable years **ending prior to** and **on or after** December 31, 2009. The Department regulation, in fact, mirrors the Section 601(b)(3) language **prior to** the 2009 amendment. Therefore, I find the Department regulation Section 100.2197 invalid to the extent it is inconsistent with Section 601(b)(3) language pertaining to the taxable years **ending on or after** December 31, 2009.<sup>4</sup> If an administrative regulation is inconsistent with the statute under which it was adopted, the regulation will be held invalid. Hadley v. Illinois Department of Corrections, 224 Ill.2d 365, 385, 309 Ill.Dec. 296, 864 N.E.2d 162 (2007). Courts are not required to give deference to a regulation that is no longer valid. Kean v. Wal-Mart Stores, Inc., 235 Ill.2d 351, 919 N.E.2d 926, 336 Ill.Dec. 1 (2009). The Department's regulations must be consistent with the statute under which they are promulgated. Hadley at 385. Administrative regulations can neither expand nor limit the statute they enforce. Outcom, Inc. v. Department of Transportation, 233 Ill.2d 324, 340, 330 Ill.Dec. 784, 909 N.E.2d 806 (2009).

In applying the applicable statutory language of Section 601(b)(3) to a mathematical formula, the foreign tax credit allowed is the smaller of either the total amount of taxes paid to the other state or the Illinois income tax otherwise due, multiplied by a fraction equal to the amount of the taxpayers' base income sourced outside Illinois using the allocation and apportionment provisions of Article 3 of the IITA, divided by Illinois base income. As applied to Taxpayers, the foreign tax credit allowed is a smaller of either \$XXXX (New York income tax paid) or \$XXXX (Illinois income tax due) x 0 ( $\$0 \div \$XXXX$ ) (fraction equal to base income sourced to New York, divided by Illinois base income) = 0. Taxpayers' foreign tax credit is zero. This is consistent with Illinois Schedule CR (Credit for Tax Paid to Other States) and its

---

<sup>4</sup> The Department regulation Section 100.2197 is not wholly inconsistent with Section 601(b)(3) because it does accurately correspond to the statutory language pertaining to the taxable years ending **prior to** December 31, 2009.

Instructions, which, the Department argues, provide Taxpayers precise guidance on the disputed issue. Department's brief, p. 6. Forms and Schedules prescribed by the Department are included in the definition of and therefore carry the same weight as, regulations promulgated by the Department. 35 ILCS 5/1501(a)(19). The Department points to Step 2, Column B, Line 1 of 2011 Illinois Schedule CR Instructions:

<p><b>Step 2:</b> <b>Column B – Non-Illinois Portion</b> <b>Illinois Residents</b> – To determine the amount to write in Column B of each line, read and follow the specific instructions below. ***</p> <hr/> <p><b>Income</b></p> <p><b>Line 1: Wages, salaries, tips, etc.</b> Write the amount of wages not shown as Illinois wages on the state copy of the W-2 form(s) you received. <b>Do not include</b> wages taxed by another state if they are also shown as Illinois wages. ***</p>
---

(emp  
basis  
in the  
origi  
nal).  
2011  
Sche  
dule

CR Instructions, p 4.

Mr. John Doe's 2011 W-2 statements show that his Illinois wages from ABC Business were \$XXXX and \$XXXX from XYZ Business. These figures equal his 2011 W-2 wages also reported to the State of New York. Joint Ex. 7. The Department argues that per Schedule CR Instructions, Taxpayers should not have included wages taxed by the State of New York in Column B, Line 1, because those wages are also shown as Illinois wages on Mr. John Doe's W-2 statements. I agree. The Schedule CR Instructions provide that the amount on Column B of

Line 1 should have been zero. Instead, Taxpayers entered \$XXXX on Column B of Line 1, representing the percentage of time, 15.6%,<sup>5</sup> Mr. John Doe worked in the State of New York in 2011. The Department further argues that Schedule CR Instructions provide no guidance allowing Taxpayers' method of computation resulting in the percentage of time Mr. John Doe worked in the State of New York in 2011. I agree with the Department. There is no authority in either Section 601(b)(3) or Schedule CR Instructions to allow a claim of foreign credit based on base income allocated to New York by the percentage of time Mr. John Doe has worked in New York in 2011. Taxpayers' computation is based on the Department regulation Section 100.2197, which I have concluded invalid to the extent it is inconsistent with Section 601(b)(3). Taxpayers' computation resulting in the amount indicated on Lines 43 and 53 is not entitled to any weight.

The relevant portion of Taxpayers' 2011 Illinois Schedule CR<sup>6</sup> is as follows:

	Column A	Column B
<b>Step 4: Figure your Schedule CR decimal</b>		
42. Write the amount from Line 41, Column A and Column B.	<u>XXXX</u>	<u>XXXX</u>
43. Divide Column A, Line 42 by Column 42 (carry to three decimal places) Write the appropriate decimal. If Column B, Line 42 is greater than Column A, Line 42, write 1.000. Write this amount on Step 6, Line 53. →		<b>43</b> <u>      </u> .xx
<b>Step 6: Figure your credit</b>		
51 Write the total amount of income tax paid to other states on Illinois base income (see instructions).		51 <u>XXXX</u>
52 <b>Illinois Residents:</b> Write your Illinois tax due from Form IL-1040, Line 13. <b>Part-year Residents:</b> Write the amount from Step 5, Line 49		52 <u>XXXX</u>
53 Write decimal amount from Step 4, Line 43 here.		53 <u>      </u> .xx
54 Multiply Line 52 by Line 53		54 <u>XXXX</u>
55 Compare the amounts on Lines 51 and 54. Write the lesser amount here and on Form IL-1040, Line 16. This is your tax credit.		55 <u>XXXX</u>

<sup>5</sup> This figure, based on Mr. John Doe's 2011 calendar entries and a letter from his then employer XYZ Business, is not in dispute. At dispute is the method of computation as applied to the foreign tax credit under Section 601(b)(3). Joint Exs. 8-9.

<sup>6</sup> Lines 44-50 are omitted as they are irrelevant to the instant case.

As the amount on Column B, Line 1 in 2011 Schedule CR should be a zero, Column B of Line 42 also becomes a zero, because the amount is a mere carryover from Column B of Lines 1 and 41. The amount on Line 51 in Schedule CR is not in dispute. Mr. John Doe's W-2 statements show he has paid to New York a total of \$XXXX, rounded to the nearest dollar, in nonresident income tax. Joint Exs. 2, 7. Pursuant to the Schedule CR Instructions, the result should be as follows:<sup>7</sup>

	Column A	Column B
<b>Step 4: Figure your Schedule CR decimal</b>		
42. Write the amount from Line 41, Column A and Column B.	<u>XXXX</u>	<u>          .00</u>
43. Divide Column A, Line 42 by Column 42 (carry to three decimal places) Write the appropriate decimal. If Column B, Line 42 is greater than Column A, Line 42, write 1.000. Write this amount on Step 6, Line 53. →	<b>43</b>	<u>          .00</u>
<b>Step 6: Figure your credit</b>		
51 Write the total amount of income tax paid to other states on Illinois base income (see instructions).	51	<u>XXXX</u>
52 <b>Illinois Residents:</b> Write your Illinois tax due from Form IL-1040, Line 13. <b>Part-year Residents:</b> Write the amount from Step 5, Line 49	52	<u>XXXX</u>
53 Write decimal amount from Step 4, Line 43 here.	53	<u>          .00</u>
54 Multiply Line 52 by Line 53	54	<u>          .00</u>
55 Compare the amounts on Lines 51 and 54. Write the lesser amount here and on Form IL-1040, Line 16. This is your tax credit.	55	<u>          .00</u>

Because no portion of Mr. John Doe's 2011 income was sourced to the State of New York according to the Article 3 provisions of the IITA, I conclude that Taxpayers are not entitled to a foreign tax credit under Section 601(b)(3) claimed on Line 55 of the Schedule CR, thus, on Line 17 of IL-1040-X. I find that Illinois is entitled to tax 100% of Mr. John Doe's 2011 taxable income with no credit allowed under Section 601(b)(3) for nonresident income tax paid to the State of New York. The result is identical to the figures contained in the Notice of Claim Denial

<sup>7</sup> Lines 44-50 are omitted as they are irrelevant to the instant case.

the Department issued, denying Taxpayers' claim of a foreign tax credit in the amount of \$XXXX. Joint Ex. 4.

**Recommendation:**

For the foregoing reasons, I recommend that the Director finalize the Notice of Claim Denial as issued, with penalties and interest to accrue pursuant to statute.

January 14, 2015

Kelly K. Yi  
Administrative Law Judge