IN THE ILLINOIS
INDEPENDENT TAX TRIBUNAL
COOK COUNTY, ILLINOIS

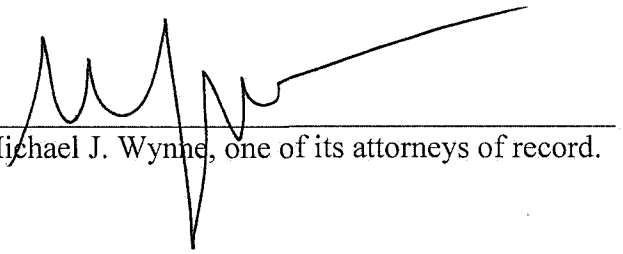
PREMIER AUTO FINANCE, INC.,	)	
Petitioner,	)	
	)	
	)	**No. 15 TT 175**
v.	)	**Chief Judge James M. Conway**
	)	
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Petitioner, Premier Auto Finance, Inc., by and through its attorneys, Reed Smith LLP, moves this Tribunal for the entry of summary judgment in its favor and against the Respondent, the Illinois Department of Revenue (the "Department") on Count I of its Petition, pursuant to Section 2-1005 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1005. In support of its Motion, Petitioner submits the attached Memorandum of Law with exhibits.

Respectfully submitted,

PREMIER AUTO FINANCE, INC.

By: 

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IN THE ILLINOIS
INDEPENDENT TAX TRIBUNAL
COOK COUNTY, ILLINOIS

PREMIER AUTO FINANCE, INC., Petitioner,	)	
v.	)	No. 15 TT 175 Chief Judge James M. Conway
THE ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	

MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Petitioner, Premier Auto Finance, Inc. ("Premier" or "Petitioner"), by and through its attorneys, Reed Smith LLP, moves this Tribunal for the entry of summary judgment in its favor and against the Respondent, the Illinois Department of Revenue (the "Department") on Count I of its Petition, pursuant to Section 2-1005 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1005.

I. FACTS

The following material facts are not disputed by the parties. Premier Auto Finance, Inc. ("Premier") was a wholly-owned subsidiary of Aon Corporation for the taxable years 2006, 2007, and 2008 (the "Taxable Period"). Answer, ¶¶ 3 & 6. Premier is the parent company of several other corporations, including Cananwill, Inc. (PA), Cananwill, Inc. (CA), and Cananwill Corporation (DE) (hereafter collectively referred to as the "Cananwill entities"). Answer, ¶¶ 3–7.

Aon Corporation and its subsidiaries filed three Illinois combined returns during the Taxable Period: one combined return for general corporations, a second combined return for

insurance companies, and a third combined return for financial organizations. Answer, ¶ 17. The originally filed 2006, 2007 and 2008 Illinois combined returns for "financial organizations" included Premier and the Cananwill entities. Answer, ¶ 19.

During the Taxable Period, the Cananwill entities were in the business of originating short-term (typically 12 months or less) loans to businesses to finance their commercial property and casualty insurance premium obligations, which allowed businesses to pay their insurance premiums over time rather than in one lump sum. Answer, ¶¶ 5 & 19. In other words, the Cananwill entities were providing financing for the purchase of insurance contracts. After the fact and within the statute of limitations, the taxpayer determined that this business did not qualify the Cananwill entities as financial organizations, it filed amended returns. Answer, ¶ 21. The timely-filed amended tax returns had the effect of moving the Cananwill entities out of the financial organizations combined return and into the general combined return.[1] Answer, ¶ 22.

The *Petitioner's Response to the Department's First Request to Admit Facts*, which was answered under sworn affidavit by one of Petitioner's employees, established that the Cananwill entities, during the tax years at issue:

- Did not hold a security interest in a customer receivable of a borrower.
- Did not make a loan secured by a customer receivable.
- Did not hold a security interest in a customer receivable of a borrower.

See **Exhibit 1**.

[1] Though not directly germane to this case, it is worth pointing out that the Department had two parallel audits of Aon and its subsidiaries (including Premier and the Cananwill entities). One of the audits resulted in a "no liability" closing letter. The other audit assessed the tax we dispute here. Department emails contained in the audit file illustrate the Department's confusion in this case. *See* Dept. 0019 – 0022 (attached as **Exhibit 2**).

II. SUMMARY JUDGMENT IS PROPER IN THIS CASE

A. STANDARD FOR SUMMARY JUDGMENT

Summary judgment should be granted "if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c). The interpretation of legislation—in this case the Illinois Income Tax Act—presents questions of law resolvable through summary judgment. *See Barnett v. Zion Park District*, 171 Ill. 2d 378, 384–85 (1996). The existence of factual questions that are unrelated to the essential elements of the cause of action does not preclude a court from granting summary judgment. *Staley Continental, Inc. v. Venterra Sales & Management Co*, 228 Ill. App. 3d 174 (1st Dist. 1992). If no genuine issue of material fact exists, the court must grant judgement as a matter of law. *First State Insurance Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851 (1st Dist. 1994). "An issue of fact is not material, even if disputed, unless it has legal and probative force as to the controlling issue." *First of America Bank, Rockford, NA., v. Netsch*, 166 Ill. 2d 165 (1995); *see also Pietruszynski v. McClier Corporation, Architects & Engineers*, 338 Ill. App. 3d 58 (1st Dist. 2003).

B. ISSUE TO BE DECIDED

The issue in this case is whether the Cananwill entities were "financial organizations" for purposes of Section 304(c) of the Illinois Income Tax Act [35 ILCS 5/304(c)]. If the Cananwill entities were not financial organizations, they should have been included in the general combined unitary return of Aon for the Taxable Period, and Petitioner's claim for refund should have been granted. 35 ILCS 5/1501(a)(27)(B).

The Department admitted "the Cananwill entities were in the business of originating short-term loans to businesses to finance commercial property and casualty insurance premium

obligations." Answer, ¶ 19. This is the material fact of the case because the business activities of the Cananwill entities determine whether they are "financial organizations" under the IITA. *See* 35 ILCS 5/1501(a)(8)(A) & (C). The sole controversy in this case is a legal one, namely, whether insurance contracts are: (A) intangibles (as Petitioner contends) and hence the Cananwill entities are not financial organizations; or (B) services (as the Department contends) and hence the Cananwill entities are financing "customer receivables" as defined in Section 1501(a)(8)(C)(i)(b) and are therefore financial organizations.

Given that there are no genuine issues of material fact, all that remains are purely legal questions. Petitioner is entitled to judgment as a matter of law, as explained below.

III. SUMMARY OF LAW

A "financial organization" is defined by the Illinois Income Tax Act as "any bank, bank holding company. Trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, building and loan association, credit union, currency exchange, cooperative bank, small loan company, sales finance company, investment company, or any person which is owned by a bank or bank holding company." 35 ILCS 5/1501(a)(8)(A). The term "sales finance company" is further defined in IITA Section 1501(a)(8)(C), which provides in pertinent part:

> . . . the term "sales finance company" has the meaning provided in the following item (i) or (ii):
>
> > (i) A person primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business of making loans upon the security of customer receivables, the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower, or the business of finance leasing. For purposes of this item (i), "customer receivable" means:

(a) a retail installment contract or retail charge agreement within the meaning of the Sales Finance Agency Act, the Retail Installment Sales Act, or the Motor Vehicle Retail Installment Sales Act;

(b) an installment, charge, credit, or similar contract or agreement arising from the sale of tangible personal property or services in a transaction involving a deferred payment price payable in one or more installments subsequent to the sale; or

(c) the outstanding balance of a contract or agreement described in provisions (a) or (b) of this item (i).

35 ILCS 5/1501(a)(8)(C)(i)(b).

The Department's IITA Regulation, Section 100.9710(d)(l0), in part, provides as follows:

(10) Entities engaged in the business of a "sales finance company." The term "sales finance company" has the meaning provided in subsection (d)(10)(A) or (B):

A) Under IITA Section 1501(a)(8)(C)(i), the term "sales finance company" means an entity primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business or making loans upon the security of customer receivables, the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower, or the business of finance leasing. For purposes of this subsection (d)(10)(A), a "customer receivable" means:

i) A retail installment contract or retail charge agreement within the meaning of the Sales Finance Agency Act [205 ILCS 660/2], the Retail Installment Sales Act [815 ILCS 405/2.6 and 2. 7], or the Motor Vehicle Retail Installment Sales Act [815 ILCS 375/2.5];

ii) An installment, charge, or similar contract or agreement arising from the sale of tangible personal property or services in a transaction involving a deferred payment price payable in one or more installments subsequent to the sale;

iii) The outstanding balance of a contract or agreement described in subsection (d)(10)(A)(i) or (ii) or this Section; or

iv) A loan, or balance under a loan, made by a lender for the express purpose of funding purchases or tangible personal property or services by the borrower.

A customer receivable need not provide for payment of interest on deferred payments. A sales finance company may purchase a customer receivable from, or make a loan secured

by a customer receivable to, the seller or lender in the original transaction or from or to a person who purchased the customer receivable directly or indirectly from that seller or lender.

IV. ARGUMENT

A. INSURANCE CONTRACTS ARE INTANGIBLE PROPERTY, THEREFORE THE CANANWILL ENTITIES ARE NOT FINANCING SERVICES OR TANGIBLE PERSONAL PROPERTY, AND THEREFORE THEY'RE NOT SALES FINANCE COMPANIES.

Insurance is not defined or specifically classified as any type of property by the IITA or the associated regulations. The Illinois Insurance Code also fails to define the term "insurance." Under Illinois common law, insurance has been defined as "(1) a contract or agreement between an insurer and an insured which exists for a specific period of time; (2) an insurable interest possessed by the insured; (3) consideration in the form of a premium paid by the insured to the insurer; and (4) the assumption of risk by the insurer whereby the insurer agrees to indemnify the insured for potential pecuniary loss to the insured's property resulting from certain specified perils." *Homeward Bound Services, Inc. v. Illinois Dept. of Ins.*, 365 Ill. App. 3d 267, 272 (3d Dist. 2006). Another Illinois common law definition describes insurance as "a contract of indemnity by which the insurer undertakes to indemnify the insured against pecuniary loss arising from the destruction of, or injury to, the insured's property . . . . The essence of the contract is indemnity against loss." *Griffin Systems, Inc. v. Washburn*, 153 Ill. App. 3d 113, 116 (1st Dist. 1987) (*quoting Cont. Cas. Co. v. Fleming*, 46 Ill. App. 2d 276, 284 (1964)). Notably, both definitions define insurance as a type of contract. These definitions of insurance found in Illinois case law accord with the U.S. Supreme Court's analysis of the issue. *See Helvering v. Le Gierse*, 312 U.S. 531 (1941) (cited approvingly in *Wendy's Int'l v. Hamer*, IL App (4th) 110678, ¶ 32).

As noted by the Department in a Letter Ruling, the "[s]ale of [a] contract constitutes the sale of an intangible . . . ." ST 91-0431-PLR (May 31, 1991).[2] Ten years later, the Department reinforced this understanding in a General Information Letter, where the Department ruled that a life insurance policy "is a *contract* between the holder of a policy and an insurance company whereby the company agrees, in return for premium payments, to pay a specified sum (i.e., the face value or maturity value of the policy) to the designated beneficiary upon the death of the insured. IT 01-0070-GIL (Aug. 30, 2001) (emphasis added). A 2012 Letter Ruling from the Department of Revenue yet again cements this classification of insurance as an intangible. In the Ruling, a taxpayer wondered whether a salesperson soliciting sales of insurance in Illinois would create nexus and whether such activities were shielded from income taxation by Public Law 86-272. *See* IT 12-0029-GIL (Oct. 5, 2012). After noting that such activities would be sufficient to create nexus, the Letter Ruling then analyzed whether P.L. 86-272 applied to the taxpayer. The Department wrote that "it is our impression that your Client sells insurance which is considered 'intangible' property. Activities that involve sales other than of tangible personal property (i.e. insurance) are not protected by Public Law 86-272." IT 12-0029-GIL (Oct. 5, 2012). Therefore, the taxpayer had to pay Illinois income tax on its activities. This Letter Ruling is important because it clearly states the Department's belief that insurance contracts are intangible property for income tax purposes.

Illinois courts have construed the character of insurance under federal tax law, finding it to be intangible property. In *Wendy's* the court wrote "[u]nder federal tax law, insurance involves both risk shifting and risk distribution. It is an *agreement* to protect the insured against

[2] This was a sales tax ruling, not an income tax ruling. Petitioner is not asserting that the Department is necessarily bound by ST 91-0431-PLR in this case, but believes that it should have to explain why, in the absence of a statutory provision addressing the issue, the sale of a contract would be the sale of intangible property for sales tax purposes but not for income tax purposes.

a direct or indirect economic loss arising from a defined contingency whereby the insurer undertakes no present duty of performance but stands ready to assume the financial burden of any covered loss." *Wendy's Int'l v. Hamer*, IL App (4th) 110678, ¶ 32 (emphasis added, internal citations omitted). The Internal Revenue Code, in various instances, categorizes insurance contracts as intangibles. For example, under Section 936 of the Internal Revenue Code, "intangible property" is defined to include, among other things, contracts. I.R.C. § 936(h)(3)(B)(iv). Furthermore, Section 197 of the Internal Revenue Code provides for amortization of certain types of intangible property, and included in the definition of "intangible" are "insurance in force," "insurance expirations,"[3] and insurance contracts purchased as part of a business acquisition. *See* I.R.C. § 197(f)(5); Treas. Regs. § 1.197-2(b)(4), (b)(6) & (g)(5). The Illinois Income Tax Act generally conforms to the Internal Revenue Code. *See* 35 ILCS 5/102 ("Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code . . . .").

Finally, Black's Law Dictionary defines insurance as a "contract by which one party (the insurer) undertakes to indemnify another party (the insured) against risk of loss, damage, or liability arising from the occurrence of some specified contingency, and usu. to defend the insured or to pay for a defense regardless of whether the insured is ultimately found liable." BLACK'S LAW DICTIONARY 814 (8th ed. 2004). When interpreting statutes, dictionaries may be used to ascertain the meaning of an undefined word or phrase. *Metro. Life Ins. Co. v. Hamer*,

[3] "An 'expiration' is a copy of the face of an insurance policy made when the policy is issued. It shows the name of the insured, the type of insurance, the premium, the covered property, and the expiration date." *Newark Morning Ledger Co. v. United States*, 507 U.S. 546, 561 n.10 (1993) (internal citations omitted).

2013 IL 114234, ¶ 20. The dictionary definition of insurance, like both the Illinois and federal common law definitions, all define insurance as a contract, which is intangible property.

As the preceding analysis demonstrates, insurance contracts are intangible property. And therefore, a loan made to finance the cost of an insurance contract would be a loan made to finance the purchase of intangible property. Thus, if insurance is a contract, and the sale of a contract is the sale of intangible property, then the Cananwill entities, as sellers of financing for insurance contracts, would not be "sales finance companies" under the 35 ILCS 5/1501(a)(8)(C)(i) because they do not finance the purchase of tangible personal property or services.

B. THE INSURANCE CONTRACTS FINANCED BY PETITIONER CANNOT BE PROPERLY CATEGORIZED AS "SERVICES."

The IITA does not define the term "services." Likewise, there is no generally applicable definition of "services" in the Internal Revenue Code which could serve, through Illinois' general conformity to the Code [see 35 ILCS 5/102], as a basis for defining the term while interpreting the sales finance company provisions at issue in this case.[4] There is certainly no definition of services in the Internal Revenue Code specifically contemplating a distinction between tangible personal property, services, and intangible property for the purposes of apportioning income, because the concept of apportionment is alien to federal income taxation.

A 2002 Private Letter Ruling by the Department addressed the scope of the term "services" under IITA Section 1501(a)(8), and concluded that "the term 'services' will include expense items such as intercompany services, professional services, rental of tangible personal

[4] The "Subpart F" portion of the Code defines income from services as "derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services" but also explicitly exempts insurance income from this definition. *See* I.R.C. § 954(e)(1) & (2)(B). The provisions of Subpart F arguably have no application to the IITA, however, given that Subpart F income is subtracted from the tax base owing to Illinois' water's-edge tax base, and that the purpose of Subpart F is to end deferral of certain types of income earned abroad, which is not the purpose of the rules distinguishing between finance companies and non-finance companies for Illinois apportionment purposes. *See* 35 ILCS 5/203(b)(2)(O).

property, utilities, and other similar expenditures." IT 02-0006-PLR (Dec. 31, 2002). Insurance contracts are not similar to these services, all of which involve work performed by one person for the benefit of others. Therefore, we must turn to Illinois case law to find a definition and determine whether insurance can be categorized as a service under Illinois law.

The *Griffin Systems* case provides the touchstone for analysis of the difference between contracts for insurance and contracts for services. *Griffin Systems, Inc. v. Washburn*, 153 Ill. App. 3d 113 (1st Dist. 1987). *Griffin Systems* tackled the question of whether a seller of "vehicle protection plans" was selling insurance or services, a crucial distinction in this case because sellers of insurance are subject to the rules regulating insurance companies in Illinois, while sellers of services are not. The vehicle protection plans at issue, in exchange for a yearly charge and a $25.00 deductible per part, promised to pay for the repair or replacement of automobile parts in the case of malfunction during the coverage period. *Id.* at 115. The Court held that:

> "insurance" can be characterized as involving: (1) a contract or agreement between an insurer and an insured which exists for a specific period of time; (2) an insurable interest (usually property) possessed by the insured; (3) consideration in the form of a premium paid by the insured to the insurer; and (4) the assumption of risk by the insurer whereby the insurer agrees to indemnify the insured for potential pecuniary loss to the insured's property resulting from certain specified perils.

The *Griffin Systems* court found that the vehicle protection plans satisfied all four criteria. *Id.* 116–17. The agreement lasted for a specified period of time, the insurable interest was the mechanical parts covered by the plan, the annual payment was a "premium," and the contract indemnified against potential future losses (the costs of repairing or replacing automotive parts), and therefore was "insurance." *Id.*

Most relevant for our purposes here, the court distinguished an insurance contract from contracts for services and warranties. In either case, "the distinguishing feature which sets them

apart from an insurance policy is the fact that the respective companys [*sic*] manufacture or sell the products which they agreed to repair or replace. No third parties are involved nor is there a risk accepted which the company, because of its expertise, is unaware of." *Id.* at 118. Insurance contracts, on the other hand, "are generally issued by third parties and are based on a theory of distributing a particular risk among many customers." *Id.*

A more recent case adds that purchasers of insurance often do not receive all of the benefits provided for in their contract, whereas purchasers that enter in contracts for services normally do receive all of the benefits specified in that contract. *See Homeward Bound Services, Inc. v. Ill. Dep't of Ins.*, 365 Ill. App. 3d 267, 277 (3d Dist. 2006). In that case, the court held that a provider of "pre-need" in-home nursing services to elderly persons was selling insurance, not services, because the contracts merely entitled the customers, after an initial waiting period, to request the in-home services on an as needed basis. *Id.* at 269–70. The contract did not entitle them to ongoing services for a specified time period, and the provider admitted that "customers normally do not receive all the care specified in their plans," unlike the case of a normal services contract. *Id.* at 277.

The stark contrast drawn by the *Griffin Systems* and *Homeward Bound* courts between insurance on the one hand, and services on the other hand, illustrates why Petitioner's financing of insurance cannot be categorized as financing a service. We argued above that insurance is properly categorized as intangible property. Even if that cannot be proved definitively, Illinois case law draws a clear and firm line between insurance and services—insurance simply cannot be characterized as a service.[5] The parties agree that the Cananwill entities financed insurance. Answer, ¶ 19. The law does not consider insurance a service. Accordingly, it is impossible to

[5] We feel no need to argue that insurance is not tangible personal property, but should the Department raise this argument or the Court wish to raise this issue, we raise it here in order to reserve the right to rebut such a characterization in our reply brief or at oral argument.

properly categorize the Cananwill entities as sales finance companies pursuant to the rationale that they made loans for the express purpose of funding purchases of tangible personal property or services by the borrower (the definition of a sales finance company). *See* 35 ILCS 5/1501(a)(8)(C)(i).

C. BECAUSE THE CANANWILL ENTITIES ARE NOT SALES FINANCE COMPANIES, THEY ARE NOT FINANCIAL ORGANIZATIONS PER THE IITA, AND THEREFORE THEY CANNOT BE INCLUDED IN THE FINANCIAL ORGANIZATION UNITARY BUSINESS GROUP.

Under the IITA, financial organizations are subject to special apportionment rules and can only file in unitary combined groups of other financial organizations—they cannot be comingled with non-financial organizations. 35 ILCS 5/304(c); 35 ILCS 5/1501(a)(27)(B). The IITA defines a "financial organization" as, in part, a "sales finance company." 35 ILCS 5/1501(a)(8)(A). A "sales finance company" is defined in pertinent part as "[a] person primarily engaged . . . the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower . . . ." 35 ILCS 5/1501(a)(8)(C)(i).

The Cananwill entities were in the business of originating loans to businesses in order to finance the purchase of insurance. *See* Answer, ¶ 19. As established above, insurance is an intangible; insurance is not a service nor is it tangible personal property. Accordingly, the Cananwill entities are not sales finance companies, which means they are not financial organizations under the IITA. Since non-financial organizations cannot file under a combined return with financial organizations, the Cananwill entities must therefore be removed from the combined return which was headed by Premier. Removal of the Cananwill entities from the financial organizations unitary business group results in a refund, Petitioner's claim for which the Department rejected and which serves as the basis of this lawsuit.

V. CONCLUSION

There is no legal basis for treating insurance contracts as "services"—they are intangible property. The Cananwill entities sold financing arrangements for these insurance contracts, and since those contracts are intangible property, they are not sales finance companies, because the relevant law explicitly limits such companies to those financing the purchase of tangible property or services. Therefore, the Department should have accepted the Petitioner's amended tax returns reflecting this fact.

WHEREFORE, Petitioner prays that the Tax Tribunal enter an Order that:

a. finds that the Cananwill entities are not "financial organizations" as defined by 35 ILCS 5/1501(a)(8)(A) or 86 Ill. Admin. Code § 100.9710(a) and must therefore be excluded from Premier's financial organization unitary group and included in Aon's general corporation unitary group;

b. finds that the Petitioner's amended 2006, 2007 and 2008 combined returns for Sub C Group financial organizations should be accepted as filed;

c. finds that the amended 2006, 2007 and 2008 combined returns for Aon's general corporations (Sub A Group) which include the Cananwill entities should be accepted as filed;

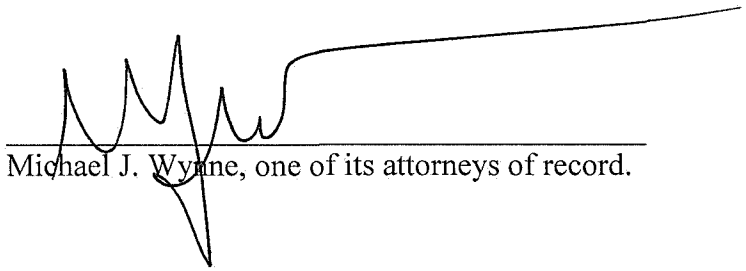
d. enters judgment in favor of Petitioner and against Defendants;

e. orders the Department to pay Petitioner a net refund of $1,345,903; and

f. grants any further relief the Tax Tribunal deems appropriate.

Respectfully submitted,

PREMIER AUTO FINANCE, INC.

By: 

Michael J. Wynne, one of its attorneys of record.

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EXHIBIT 1

ILLINOIS INDEPENDENT TAX TRIBUNAL

PREMIER AUTO FINANCE, INC., Petitioner,	)	
v.	)	15 TT 175
ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	Chief Judge James M. Conway

PETITIONER'S RESPONSE TO THE DEPARTMENT'S FIRST REQUEST TO ADMIT FACTS

Now comes Petitioner, Premier Auto Finance, Inc., by its duly authorized representative, Reed Smith LLP, pursuant to Illinois Supreme Court Rules 201 and 216, and 86 Ill. Admin. Code Sec. 200.125(d), and responds to the Illinois Department of Revenue's Requests to Admit:

REQUESTS

Department requests the admission of the truth of the following relevant facts:

1. During the Tax Years at Issue, Cananwill, Inc. (PA) (FEIN: 23-1722081) held a security interest in a customer receivable of a borrower.

ANSWER: Denied.

2. During the Tax Years at Issue, Cananwill, Inc. (PA) (FEIN: 23-1722081) made a loan secured by a customer receivable.

ANSWER: Denied.

3. During the Tax Years at Issue, Cananwill, Inc. (CA) (FEIN: 23-2382918) held a security interest in a customer receivable of a borrower.

ANSWER: Denied.

4. During the Tax Years at Issue, Cananwill, Inc. (CA) (FEIN: 23-2382918) made a loan secured by a customer receivable.

ANSWER: Denied.

5. During the Tax Years at Issue, Cananwill Corporation (DE) (FEIN: 36-3868951) held a security interest in a customer receivable of a borrower.

ANSWER: Denied.

6. During the Tax Years at Issue, Cananwill Corporation (DE) (FEIN: 36-3868951) made a loan secured by a customer receivable.

ANSWER: Denied.

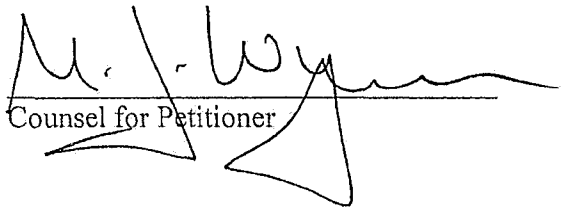
7. During the Tax Years at Issue, the Cananwill companies never held a security interest in a customer receivable of a borrower.

ANSWER: Admitted.

Date: July 19, 2016

Respectfully Submitted,

PREMIER AUTO FINANCE, INC.



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Counsel for Petitioner

VERIFICATION

I, _Jeffrey Hyla_____, being first duly sworn upon oath, state that I have read the foregoing **Petitioner's, Premier Auto Finance, Inc.'s Response to Illinois Department of Revenue's First Requests to Admit Pursuant to Supreme Court Rule 216**, and, to the best of my knowledge, information and belief, the admissions and denials therein are true and correct.

By: _____
For: PREMIER AUTO FINANCE, INC.

Subscribed and sworn before me
this 7 day of July 2016

April Adkins
Notary Public

OFFICIAL SEAL
APRIL ADKINS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/04/20

EXHIBIT 2

Bicek, John

From: Adrian, Tatjana
Sent: Friday, March 07, 2014 10:17 AM
To: Bicek, John
Subject: FW: Premier Auto Finance

John,
Can we discuss this? Please see Laurie's details below. I am not sure what needs to be done going forward. Thanks!

Tatjana Adrian
Assistant Division Manager

Phone: (312) 814-4249
Cell: (312) 898-1689
Fax: (312) 814-7224
Email: tatjana.adrian@illinois.gov

From: Evans, Laurie
Sent: Monday, March 03, 2014 12:16 PM
To: Campbell, Charles K.; Adrian, Tatjana
Cc: Stout, Ray; Tucker, Tad
Subject: RE: Premier Auto Finance

This audit cannot be cancelled because it has more the 10 hours and taxpayer contact. These NL audits were given to me by Review. I would like to give them back to review, but written assurance is required to know that the issues that were not addressed in the NL audits are going to be addressed in the currently open audits. I would appreciate feedback as quickly as possible (so would Review).

Some more details on this issue:

1) Aon Corp (36-3051915)
    a. audit for 06-07 set up 6/18/09
    b. Purpose of audit: BOB List (best of the best)
    c. Items added to audit: t/p filed amended return to report RAR 10/6/09 that were attached to the audit 1/25/10
    d. Items added to audit: ATAT research done 2/10/10 added to the audit description that a potential existed for ATAT liability may be due and appropriate ATAT penalty applied to the tune of $70M
    e. The audit was immediately assigned to J Gilbert (6/18/09), then one month later assigned to R Holl (7/13/09), upon Holl's retirement (5/31/12), the audit was assigned to P Lopez (6/1/12).
    f. Pedro turned the audit into M Farag in 12/6/12.
    g. This audit was submitted as NL with 112.75 auditor hours. (Holl 41 hours over almost 2 years, Lopez 70.75 hours over 6 months)
    h. Within a week, Perfection reviewed the NL audit and noticed another audit for the same period so held off processing pending the turn in of the other audit (this has not occurred yet).
    My Concerns with this audit: ATAT never addressed in Lopez's comments, amended returns not addressed NOR are they in the audit file (not even a copy, where did they go?), but moved to another audit, amount of time spent on an NL audit, wavier in statute to extend to 10/15/13, but then a No Liability closing letter sent when years still under audit on another track????
2) Aon Corp (36-3051915)
    a. Audit for 06-10 set up 7/20/12

b. Purpose of audit: t/p filed amended returns received 3/12/12 to report state change in UBG related to audit on Premier Auto Finance
c. Originally placed in M Farag available inventory, moved to J Bicek available inventory 7/31/12, assigned to P Lopez 7/31/12, audit transferred to G Kittelson 7/30/13
d. Time spent on audit is 365 hours, 274 auditor hours and 91 trainee hours. (P Lopez 183 hours over 1 year, G Kittelson 91 hours over 8 months (with trainee))
My concerns with this audit: are the amended returns from the above audit in it? Will the ATAT issue be addressed? Will both sets of amended returns be addressed? Apparently a waiver is present until 10/15/14, but for what years? Already a great deal of time spent on this audit as well

3) Premier Auto Finance (36-3730668)
   a. Audit for 06-08 set up 7/14/10
   b. Purpose of audit: set up due to the AON audit above, verification of sales factor, UBG and losses related to AON filing
   c. Assigned to R Holl 7/29/10, upon Holl's retirement (5/31/12), the audit was assigned to P Lopez (6/1/12)
   d. Pedro turned the audit into M Farag in 12/6/12.
   e. This audit was submitted as NL with 175 auditor hours. (Holl 140 hours over almost 2 years, Lopez 35 hours over 6 months)
   f. Within a week, Perfection reviewed the NL audit and noticed another audit for the same period so held off processing pending the turn in of the other audit (this has not occurred yet).
   My Concerns with this audit: amount of time spent on an NL audit, wavier in statute to extend to 10/15/13, but then a No Liability closing letter sent when years still under audit on another track????

4) Premier Auto Finance (36-3730668)
   a. Audit for 06-10 set up 7/23/12
   b. Purpose of audit: t/p filed amended returns received 3/12/12 to report state change in UBG related to audit on Aon Corp
   c. Originally placed in M Farag available inventory, moved to J Bicek available inventory 7/31/12, assigned to P Lopez 7/31/12
   d. t/p is currently in ICB as of 11/7/13
   e. Time spent on audit is 244 hours, 223 auditor hours and 21 trainee hours. (P Lopez 223 hours over 13 months)
   My Concerns with this audit: amount of time spent on an NL audit, wavier in statute to extend to 10/15/13, but then a No Liability closing letter sent when years still under audit on another track????

Laurie

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From: Campbell, Charles K.
Sent: Monday, March 03, 2014 7:04 AM
To: Adrian, Tatjana

Cc: Evans, Laurie
Subject: RE: Premier Auto Finance

Tatjana,

With the 1st cycle being proposed to be closed as a NL, I say let Nature take its course and go ahead and close accordingly. I believe that the hours on the NL greatly exceed what is permissible to class as a cancellation. I am copying Laurie Evans for her input on that point, just in case I've overlooked a material fact.

For the Track in ICB (and Aon), is it correct to presume that we had no other issues with unitary grouping except for the issue addressed by Pedro on the X's?

The description in GenTax referred to the related taxpayers, which should have triggered in the supervisors mind the need for AON & Premier to be worked together. Ideally, these cases should have been worked by the same auditor, and if not, managed by the same supervisor. At the very least, there should have been coordination between Mike & John about the 2 taxpayers. Any such coordination is not visible to me here, but we should have such going forward.

Charles

From: Adrian, Tatjana
Sent: Friday, February 28, 2014 4:52 PM
To: Campbell, Charles K.
Subject: FW: Premier Auto Finance

Charles,

Based on John's explanation below, both audit cycles were assigned to the same RA – Pedro, but different RAS (Farag and Bicek).
My question is what can we do to cancel the first cycle as Pedro proposed? And should it be cancelled?

Please let me know. Thank you,

Tatjana Adrian
Assistant Division Manager

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Email: tatjana.adrian@illinois.gov

From: Bicek, John
Sent: Friday, February 28, 2014 3:41 PM
To: Adrian, Tatjana
Subject: RE: Premier Auto Finance

Tatjana,

Pedro received these audits while working for Mike F. The first audit track was the one that covered 2006, 2007 and 2008. The audit was closed as a no liability audit. While the statute was still open for 06, 07 & 08 the taxpayer filed amended returns covering the 5 year audit period. The amended returns attempted to take 3 companies out of the IL UBG because the taxpayer said that they were not financial organizations. (I believe that Premier Auto Finance was the designated for Sears Roebuck's financial group). Pedro denied the claim on the basis that all of the companies in the original return qualified as financial organizations. This cycle of the audit is currently in ICB. Pedro also said that

there was some discussion regarding the cancellation of the first audit track once the taxpayer filed the amended returns but that did not happen.

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From: Adrian, Tatjana
Sent: Thursday, February 27, 2014 2:39 PM
To: Bicek, John
Subject: FW: Premier Auto Finance

John,

Please see Charles's email below. I have a few questions for you and Pedro before responding to Charles

1) Why we have separate audit tracks for audits with overlapping years? How can we have same years included in different audits?
2) Should one of these audits be under AON's FEIN? It seems like there are some issues with unity.

Please provide me your answers and thoughts on it.
Thank you,

Tatjana Adrian
Assistant Division Manager

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From: Campbell, Charles K.
Sent: Tuesday, February 25, 2014 5:59 PM
To: Adrian, Tatjana
Subject: Premier Auto Finance

Tatjana,

I have become aware that for Premier we have audited taxpayer's '06, '07 & '08 years under Track A46701568, and the '06, '07,'08, '09 & '10 years under Track A808275968. The 1st track was finished as a NL, and the 2nd is in ICB. Did we really need 2 tracks here? Also, the description in GenTax references AON. To ensure that the group is properly controlled, 1 auditor is usually assigned both taxpayers. If circumstances did not permit that, all cases should have been coordinated by 1 supervisor.

Do you know why that wasn't done in this instance? We should consider such going forward.

Charles