

ILLINOIS INDEPENDENT  
TAX TRIBUNAL

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CAR CREDIT CENTER CORP. )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE STATE OF ILLINOIS )  
 DEPARTMENT OF REVENUE )  
 )  
 Respondent. )

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RECEIVED  
DEC 18 2015  
BY: *JMC*  
15TT260

PETITION TO REVIEW  
SALES TAX REFUND CLAIM DENIAL

Petitioner, Car Credit Center Corp. ("CCC"), states as its petition for review of the denial of its claim for a refund of sales tax as follows:

**Introduction**

1. CCC seeks review of the denial by the Illinois Department of Revenue of its claim for a credit or refund of sales tax it paid on vehicles it sold to consumers who subsequently had their vehicles repossessed. CCC is seeking a refund for repossessions which occurred during 2013.

**Parties**

2. Petitioner CCC is a Delaware corporation doing business in Chicago, Illinois. CCC sells used vehicles to consumers with poor or non-existent credit histories, and finances the purchases utilizing retail installment sales contracts executed by the

vehicle purchasers. CCC's sole place of business is located at 7600 S. Western Avenue, Chicago, Illinois. CCC's taxpayer identification number is 35-2438879.

3. Respondent, Illinois Department of Revenue (the "Department"), is a state agency which administers the collection of Retailers' Occupation Tax (hereinafter "sales tax") on vehicles sold in Illinois.

### **Jurisdiction**

4. The Illinois Independent Tax Tribunal has jurisdiction in this matter under 35 ILCS 1010/1-45 because CCC is seeking review of a Notice of Tentative Denial of Claim it received from the Department denying its claim for a refund of sales tax it paid on financed vehicles subsequently repossessed. The amount of the refund claim exceeds \$15,000.00 exclusive of interest.

### **Statement of Facts**

5. CCC is a licensed motor vehicle dealer that sells used vehicles at retail to consumers for use in Illinois.

6. CCC is a "retailer" subject to the tax imposed by the Illinois Retailers' Occupation Tax Act.

7. CCC pays the sales tax on its sale of vehicles. CCC paid the full sales tax on the repossessed vehicles which are the subject of its refund claim.

8. CCC finances the consumers' purchases of vehicles, including the sales tax due on such purchases, through retail installment sales contracts (the "Contracts").

9. After the sale of the vehicles, CCC assigns the Contracts to its affiliate, Overland Bond & Investment Corporation ("Overland"). In exchange for the

assignment, Overland pays to CCC an amount equal to 60% of the amount financed under the Contracts, i.e. the net purchase price of the vehicle plus the sales and other taxes and fees due on the sale.

10. Overland is an Illinois corporation with its principal place of business in Chicago, Illinois. CCC and Overland are “sister” companies, both owned by the same shareholders holding identical shareholder interests, and both are governed by the same Board of Directors.

11. After the assignment of the Contracts to Overland by CCC, Overland handles the collection of all amounts due under the Contracts. CCC assists Overland in those collection efforts by accepting payments from consumers and remitting them to Overland.

12. In addition, under a “Recourse Agreement” between CCC and Overland, CCC partially guarantees certain payments owed by the consumers under the Contracts. If a default occurs by a consumer under a Contract, CCC is obligated under the terms of the Recourse Agreement to reimburse in part Overland by repossessing the financed vehicle that is the subject of the default, and restoring the vehicle to as good a condition as reasonably possible, including restoring the vehicles to good mechanical working order and making the necessary adjustments, replacements and repairs, supplying any required replacement parts. CCC is also obligated under the terms of the Recourse Agreement to coordinate the subsequent sale of the vehicle in such a manner as to maximize the resale proceeds, and deliver the vehicle to such auction or other location for resale as Overland directs.

13. A copy of the Recourse Agreement is attached as Exhibit A.

14. Because CCC sells vehicles to consumers with poor credit, there is a fairly significant number of defaults which occur annually.

15. When a default occurs, the consumers obligated on the Contracts have not repaid the full vehicle purchase price and sales tax. Under Illinois law, the unrecovered portion of the sales tax may be credited or refunded back to the party who paid the tax by filing with the Department a form "ST-557 Claim for Credit for Repossession of Motor Vehicles, Watercraft, Aircraft, Trailers, and Mobile Homes."

16. A sample copy of a form ST-557 filed by CCC is attached as Exhibit B.

17. Both Overland and CCC bear a portion of the economic loss on each of the defaulted Contracts. Overland incurs an economic loss equal to the unrecovered portion of the amount it paid for the assignment of the Contract (60% of the amount financed). CCC suffers an economic loss when it assigns the Contracts to Overland for a 40% discount and then, under the Recourse Agreement, incurs the expense of repossession, restoration, repair, and disposition of the repossessed vehicles to satisfy its partial guarantee.

18. After reasonable attempts to collect the balances that remain on the defaulted Contracts, the Contracts are determined to be worthless and are written off by Overland. Overland also claims the remaining unpaid balances as bad debts on its United States corporate income tax returns under § 166 of the Internal Revenue Code. This write-off assists Overland in recouping some of the economic loss it suffers on the defaulted Contracts.

19. Under the Recourse Agreement, if a default occurs, Overland assigns to CCC all of its right, title and interest to any sales tax credit or refund due from the Department on the vehicles CCC repossesses. Assignment of the refund claim is intended to assist CCC in recouping some of the loss it suffers because of Contract defaults.

### **CCC's Claims for Refunds**

20. Beginning in May 2015, CCC filed with the Department a number of ST-557 claim forms seeking a sales tax credit or refund on the vehicles it repossessed in 2013 (the "Claims"). Under these Claims, CCC sought a refund or credit under 86 Ill. Admin. Code 130.1960.

21. Each of the Claims contained the detailed information and amounts required to be reported within Part 3 of the ST-557 claim form.

22. Beginning in 1999 and continuing through 2011, CCC had submitted similar ST-557 claims for credit or refunds for a portion of the sales tax paid on the repossessions which occurred in prior years. All of these earlier claims were allowed and the requested refunds paid.

23. On October 22, 2015, the Department sent to CCC a Notice of Tentative denial of Claim, denying refund claims totaling \$22,515.00 for certain identified vehicles that were repossessed in 2013 and for which claims for refund were submitted in 2015.

24. A copy of the October 22, 2015 Notice of Tentative Denial is attached as Exhibit C.

25. On October 27, 2015, the Department sent to CCC a Notice of Tentative denial of Claim, denying refund claims totaling \$33,034.00 for certain identified vehicles that were repossessed in 2013 and for which claims for refund were submitted in 2015.

26. A copy of the October 27, 2015 Notice of Tentative Denial is attached as Exhibit D.

27. CCC anticipates that the Department will be sending additional Notices of Tentative Denial for sales tax refund claims CCC submitted in 2015 for vehicles repossessed in 2013. CCC reserves the right to amend this Petition to include such additional claim denials when received.

#### **Reasons CCC's Refund Claims Should Be Allowed**

28. 86 Ill. Admin. Code 130.1960(d) provides:

d) Bad Debts

- 1) In case a retailer repossesses any tangible personal property and subsequently resells such property to a purchaser for use or consumption, his gross receipts from such sale of the repossessed tangible personal property are subject to Retailers' Occupation Tax. He is entitled to a bad debt credit with respect to the original sale in which the default has occurred to the extent to which he has paid Retailers' Occupation Tax on a portion of the price which he does not collect, or which he is not permitted to retain because of being required to make a repayment thereof to a lending agency under a "with recourse" agreement. Retailers of tangible personal property other than motor vehicles, watercraft, trailers and aircraft that must be registered with an agency of this State may obtain this bad debt credit by taking a deduction on the returns they file with the Department for the month in which the federal income tax return or amended return on which the receivable is written off is filed, or by filing a claim for credit or provided in subsection (d)(3) of this Section. Because retailers of motor vehicles, watercraft, trailers and aircraft do not pay Retailers' Occupation

Tax to the Department on retail sales of motor vehicles, watercraft, trailers, and aircraft with monthly returns, but remit the tax to the Department on a transaction by transaction basis, they are unable to take a deduction on the returns that they file with the Department, but may file a claim for credit with the Department, as provided in subsection (d)(3), on any transaction with respect to which they desire to receive the benefit of the repossession credit.

- 2) Retailers who incur bad debt on any tangible personal property that is not repossessed may also obtain bad debt credit as provided in subsections (d)(1) and (3).
- 3) In the case of tax paid on an account receivable that becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the Retailers' Occupation Tax Act, on the date that the Federal income tax return or amended return on which the receivable that is written off is filed.

24 Ill. Reg. 18376, effective December 1, 2000.

29. CCC is entitled to a refund under § 130.1960(d)(1) because (a) CCC is a retailer who paid the sales tax on the vehicles sold under the Contracts; (b) CCC repossessed the vehicles after the purchasers defaulted on the Contracts; (c) CCC paid the sales tax on a portion of the vehicle sales price which CCC did not collect; and (d) following the consumers' defaults, CCC had to pay under the Recourse Agreement Overland's repossession, restoration, repair, and disposition costs which exceed the unpaid sales tax.

30. CCC is entitled to a refund under § 130.1960(d)(3) because when the sales tax paid on the accounts receivable under the Contracts became a bad debt, the tax paid became a tax paid in error for which a claim for credit or refund may be filed under

Section 6 of the Retailers' Occupation Tax Act. The right to file a refund claim under § 130.1960(d)(3) accrued "on the date that the Federal income tax return or amended return on which the receivable is written off is filed." See Order and Decision in *Citibank, N.A. v. Illinois Department of Revenue*, 13 L 050072, October 17, 2013, attached as Exhibit E.

31. To the extent the Department contends that only Overland had the right to file for a credit or refund because it wrote off the receivable on its Federal income tax, Overland assigned that right to CCC under the Recourse Agreement (Exhibit A). Claims against the government are assignable unless there is language in a statute prohibiting it. There is nothing in Section 6 of the Retailers' Occupation Tax Act, or in § 130.1960, prohibiting Overland's assignment of the refund Claims.

32. Because CCC is entitled to a credit or refund for a portion of the sales tax paid on the vehicles it repossessed under § 130.1960(d)(1) and (3), the Department's Notice of tentative Denial of Claim was issued in error and the requested credit or refund should have been allowed.

Wherefore, Petitioner Car Credit Center Corp. respectfully requests this Tribunal to order that its Claims for credit or refunds for the vehicles repossessed in calendar year 2013 be allowed and that it be awarded interest on the amount of the claims from dates the vehicles were repossessed through the date of the award.



Respectfully submitted,

**CAR CREDIT CENTER CORP.**



By: \_\_\_\_\_  
One of its attorneys

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[jboland@dalugaboland.com](mailto:jboland@dalugaboland.com)

## RECOURSE AGREEMENT

This Recourse Agreement ("Agreement") is made as of the first (1<sup>st</sup>) day of March, 1999 to memorialize the longstanding agreement and course of conduct by and between Car Credit Center Corporation, an Illinois Corporation ("Car Credit"), with its principal place of business at 7600 S. Western Avenue, Chicago, Illinois, and Overland Bond and Investment Corporation, a Delaware Corporation ("Overland") with its principal Illinois place of business at 4701 W. Fullerton, Chicago, Illinois.

*WHEREAS* Car Credit is in the business of selling automobiles at retail to consumer customers, many of which are financed by the customers ("Borrowers"), and

*WHEREAS* Overland is in the business of purchasing automobile Retail Installment Contracts ("Contracts") and collecting thereon, and

*WHEREAS* Overland from time to time and on a case by case basis purchases Contracts from Car Credit, and

*WHEREAS* Overland requires that Car Credit partially guaranty certain payments of Borrowers under the Contracts purchased by Overland under the terms and conditions of this Agreement, and

*WHEREAS* Car Credit agreed that it will recondition automobiles repossessed under the Contracts and perform such additional services as required hereunder to satisfy its partial guaranty obligations, and

*WHEREAS* Overland agrees to compensate Car Credit in exchange for the partial guaranty and services rendered pursuant to this Agreement, and

*WHEREAS* Car Credit and Overland by executing this Agreement wish to memorialize and confirm the agreement terms and services under which the parties have operated for many previous years,

*NOW THEREFORE*, in consideration of the mutual covenants and premises contained herein, the parties agree as follows:

1. When Overland agrees to purchase Contracts, Car Credit agrees to sell, and Overland agrees to purchase, them upon the terms and conditions of this Agreement.
2. Upon a default by a Borrower under any Contract purchased by Overland from Car Credit, Car Credit shall, at its expense:
  - a. repossess the automobile and deliver it to such facility as Car Credit designates,

- b. restore the automobile to as good a condition as reasonably possible,
- c. restore the automobile to good mechanical working order and make necessary adjustments, replacements, and repairs, supplying any necessary replacement parts as required,
- d. coordinate the subsequent sale of the automobile in such a manner as to maximize the resale proceeds which will in turn benefit the consumer, and
- e. deliver the automobiles to such auction or other location as Overland directs.

3. Overland assigns all right and title to any Retailers Occupation (Sales) Tax ("Sales Tax") credit from the Illinois Department of Revenue on the repossession of the automobile to Car Credit.

4. Overland shall unconditionally credit and reduce the Borrower's obligations under the Contract by the amount of the Sales Tax credit applied for by Car Credit. Should the value of the repossessed automobile plus the amount of Sales Tax credit applied for exceed the liability due to Overland, Overland shall unconditionally refund to the Borrower such excess amount.

5. The liability of Car Credit shall not be terminated by, and Car Credit consents to, any extension, renewal or postponement of the time of performance or any other indulgence, modification, waiver or amendment of the terms of any of the Contracts, any substitution, exchange or release of collateral under the Contracts, the addition or release of any party primarily or secondarily liable under the Contracts, including any guarantor thereunder and the variance or waiver of any term evidencing liability relating to the Contracts, whether or not notice thereof is given to Car Credit or Car Credit's consent is obtained. Overland shall have no duty to take, collect, or protect any collateral or any income thereon, nor to preserve any rights against other parties. Overland may proceed under this Agreement immediately upon a Borrower's failure to pay or perform without resorting to or regard to any collateral or any other agreement or source of payment.

6. This is a continuing Agreement and shall remain in full force and effect and be binding upon both parties until written notice sent by registered or certified mail and actually be received by the other party.

7. The parties acknowledge that the underlying transactions to which this Agreement relate are made and are primarily performed in the state of Illinois. The execution of this Agreement and performance hereunder is made in Illinois and both parties shall be subject to the personal jurisdiction of the Courts of the State of Illinois or the Federal District Court located in Chicago, Illinois. The parties consent to the jurisdiction of the courts in Chicago, Illinois except that any judgement so rendered may be enforced anywhere the party against whom enforcement is sought has assets, is doing business or has an office.

8. No provision of this Agreement can be changed, waived or discharged except by an instrument in writing signed by the party against whom such enforcement is sought.

9. This Agreement shall inure to the benefit of each respective party, as well as its successors and assigns.

10. This Agreement is intended by the parties as a final, complete and exclusive statement of the terms hereof. The past course of dealing between the parties shall be used or be relevant to supplement, explain or modify any term used herein. If any provision of this Agreement shall to any extent be held invalid or unenforceable, then only such provision shall be deemed ineffective and the remainder of this Agreement shall not be affected.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the year and date first above written.

CAR CREDIT CENTER CORPORATION

By: *Edward E. ...*

OVERLAND BOND AND INVESTMENT CORPORATION

By: *Ray Kaeble*

C:\WORKAREA\CORPORATE\Basis\Recourse3.4.91.vpd

Aug 11 p.1



Illinois Department of Revenue

# ST-557 Claim for Credit for Repossession of Motor Vehicles, Watercraft, Aircraft, Trailers, and Mobile Homes

REV 02 FORM 033  
ES / /  
NS DP CA RC

## Step 1: Identify your business

Do not write above this line

1 Account ID no. 0103-0752 Illinois account ID number 3 Phone ( 773 ) 436 - 5900  
2 Business name Car Credit Center Corporation

## Step 2: Describe your finance contract information

Were all of your finance contracts sold "with recourse"? (i.e., Did you have to pay the lending institution when your customer defaulted on the loan?)  yes  no  
If you answered "no," please explain the terms of the contract on the lines below.

## Step 3: Figure the amount of overpaid tax (Round to the nearest whole dollar.)

Column 1 ST-556 tax return no.	Column 2 Buyer's name	Column 3 Date of delivery	Column 4 Date repossessed	Column 5 Amount of tax paid	Column 6 Taxable amount financed (sale price minus trade-in, minus cash down payment)	Column 7 Total amount of finance contract	Column 8 Unpaid balance of contract when repossessed	Column 9 Amount on which credit is claimed (divide Col. 6 by Col. 7; multiply result by Col. 8.)	Column 10 Overpayment (multiply Col. 9 by the tax rate)
<u>110836848</u>	<u>POWELL, KATARI</u> ✓	<u>08 / 06 / 10</u>	<u>08 / 09 / 11</u>	<u>1,098.00</u>	<u>12,149.00</u>	<u>19,163.69</u>	<u>14,741.30</u>	<u>9,345.00</u>	<u>795.00</u>
<u>115420457</u>	<u>GARCIA, CRISTELL</u> ✓	<u>11 / 04 / 10</u>	<u>08 / 09 / 11</u>	<u>1,015.00</u>	<u>11,149.00</u>	<u>18,188.64</u>	<u>15,914.92</u>	<u>9,755.00</u>	<u>829.00</u>
<u>108371519</u>	<u>MUHAMMAD, COUL</u> ✓	<u>04 / 02 / 10</u>	<u>08 / 10 / 11</u>	<u>1,015.00</u>	<u>11,149.00</u>	<u>17,991.48</u>	<u>10,610.36</u>	<u>6,575.00</u>	<u>559.00</u>
<u>416880763</u>	<u>ESPINO, PETRA</u> ✓	<u>04 / 15 / 06</u>	<u>08 / 12 / 11</u>	<u>1,104.00</u>	<u>15,052.00</u>	<u>23,091.48</u>	<u>1,810.60</u>	<u>1,180.00</u>	<u>83.00</u>

Next page  
ST-557 front (R-12/10)

Please turn page over to continue Step 3 and complete Step 4.

Total Page 1 2,266.00

This form is authorized by the Illinois Retailers' Occupation and related tax acts. Disclosure of this information is REQUIRED. Failure to provide information could result in a penalty. This form has been approved by the Forms Management Center. IL-492-2738

Aug 11 P.2

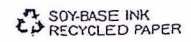
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
ST-556 tax return no.	Buyer's name	Date of delivery	Date repossessed	Amount of tax paid	Taxable amount financed (sale price minus trade-in, minus cash down payment)	Total amount of finance contract	Unpaid balance of contract when repossessed	Amount on which credit is claimed (divide Col. 6 by Col. 7; multiply result by Col. 8.)	Overpayment (multiply Col. 9 by the tax rate)
119095446	BERRY, ERICA L ✓	02 / 04 / 11	08 / 12 / 11	894.00	8,995.00	15,293.46	13,528.83	7,957.00	557.00
117410613	HERNANDEZ, MOIS ✓	04 / 23 / 11	08 / 12 / 11	723.00	8,151.00	30,028.96	29,437.04	7,990.00	579.00
459147831	CABALLERO, CRIST ✓	09 / 13 / 08	08 / 14 / 11	866.00	11,145.00	16,405.75	5,863.02	3,983.00	289.00
448959593	TOVAR JR, ISIDORO ✓	12 / 29 / 07	08 / 15 / 11	932.00	12,053.00	22,129.92	10,233.91	5,574.00	390.00
476145438	PHILLIPS, JENNIFER ✓	10 / 28 / 09	08 / 15 / 11	723.00	9,347.00	14,846.40	6,193.25	3,899.00	283.00
117408518	TARVER, LATEESA ✓	03 / 19 / 11	08 / 17 / 11	866.00	11,651.00	17,845.20	16,695.20	10,900.00	790.00
476156013	MURDOCK, DAPHAN ✓	02 / 04 / 10	08 / 18 / 11	931.00	8,149.00	12,600.00	6,765.00	4,375.00	372.00
117410928	MASON, SAMANTHA ✓	04 / 21 / 11	08 / 18 / 11	936.00	10,750.00	15,669.42	14,366.27	9,856.00	714
476151535	TAYLOR, LATRICE T ✓	01 / 13 / 10	08 / 18 / 11	1,098.00	11,149.00	19,983.60	11,743.04	6,552.00	557.00
121431357	SMITH, TASHA L ✓	05 / 04 / 11	08 / 18 / 11	931.00	10,151.00	18,544.89	17,523.10	9,592.00	815.00
119095107	HALL, VALERIE ✓	02 / 12 / 11	08 / 18 / 11	973.00	10,266.00	20,343.96	17,650.06	8,907.00	757.00
112868096	ANICETO, HUGO ✓	09 / 20 / 10	08 / 18 / 11	1,182.00	13,349.00	20,988.00	17,024.00	10,828.00	921.00
467154944	MUHAMMAD, ASAD ✓	03 / 05 / 09	08 / 19 / 11	1,181.00	9,147.00	16,200.60	5,368.45	3,031.00	258.00
Total Page 2									7,282.00
Total Page 1									2,266.00
Grand total									9,548.00

**Step 4: Sign below**

Under penalties of perjury, I state that I have examined this claim and, to the best of my knowledge, it is true, correct, and complete.

Taxpayer's signature: *[Signature]* Phone: 1773) 737-7600 Date: 9/28/12 Title: pres.  
 Preparer's signature: *Karla Hernandez* Phone: 1773) 737-7600 Date: 9/27/12 Title: act.

Mail to:  
 SALES TAX PROCESSING DIVISION  
 ILLINOIS DEPARTMENT OF REVENUE  
 PO BOX 19013  
 SPRINGFIELD IL 62794-9013



# Notice of Tentative Denial of Claim

for Form ST-556, Sales Tax Transaction Return



October 22, 2015



Letter ID: CNXXX173116X2X85

Account ID: 0103-0752

\_\_\_\_\_  
#BWNKMGV  
\_\_\_\_\_  
#CNXX X173 116X 2X85#  
\_\_\_\_\_  
CAR CREDIT CENTER CORP  
ATTN: LAURA  
7600 S WESTERN AVE  
CHICAGO IL 60620-5818



We have reviewed the claims described on the last page of this letter and have tentatively denied them because we have not established that this tax was paid in error or that issuing a credit memorandum would not result in unjust enrichment to you.

**If you do not agree, you may contest this notice by following the instructions listed below.**

- **If the amount of tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied but the total penalties and interest being denied is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice.** Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice.** Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this tentative denial of claim will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

If you have questions regarding this matter, write or call us weekdays between 8 a.m. and 4:30 p.m. Our address and telephone number are below.

Alexandria Case  
Revenue Tax Specialist I

SALES TAX PROCESSING DIVISION 2-242  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19013  
SPRINGFIELD IL 62794-9013

217 782-7517  
217 524-9001 fax

Claim Detail

<u>Batch Document Number</u>	<u>Transaction Number</u>	<u>Amount Claimed</u>
15-245-134-03-012	117410233	379.00
15-245-134-03-012	135545762	729.00
15-245-134-03-012	127480267	748.00
15-245-134-03-012	131471674	747.00
15-245-134-03-012	467158754	589.00
15-245-134-03-012	128997376	710.00
15-245-134-03-012	839773315	693.00
15-245-134-03-012	128145604	1033.00
15-245-134-03-012	475160750	330.00
15-245-134-03-012	127480002	634.00
15-245-134-03-012	128994126	479.00
15-245-134-03-012	117405308	419.00
15-245-134-03-012	128995560	860.00
15-245-134-03-012	128992773	923.00
15-245-134-03-012	840460612	1119.00
15-245-134-03-012	125042598	609.00
15-245-134-03-012	119093599	429.00
15-245-134-03-012	110838984	552.00
15-245-134-03-012	138854419	800.00
15-245-134-03-012	125042572	511.00
15-245-134-03-012	135542991	690.00
15-245-134-03-012	135542678	774.00
15-245-134-03-012	142981414	877.00
15-245-134-03-012	476150552	338.00
15-245-134-03-012	135545515	943.00
15-245-134-03-012	109374000	420.00
15-245-134-03-012	131470251	934.00
15-245-134-03-012	471355876	298.00
15-245-134-03-012	135544229	851.00
15-245-134-03-012	128997285	907.00
15-245-134-03-012	121434492	465.00
15-245-134-03-012	128997103	806.00
15-245-134-03-012	117407171	137.00
15-245-134-03-012	125038240	782.00



# Notice of Tentative Denial of Claim

for Form ST-556, Sales Tax Transaction Return



#BWNKMGV  
#CNXX XX29 8515 2169#  
CAR CREDIT CENTER CORP  
ATTN: LAURA  
7600 S WESTERN AVE  
CHICAGO IL 60620-5818

October 26, 2015



Letter ID: CNXXXX2985152169

Account ID: 0103-0752



We have reviewed the claims described on the last page of this letter and have tentatively denied them because we have not established that this tax was paid in error or that issuing a credit memorandum would not result in unjust enrichment to you.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied but the total penalties and interest being denied is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within **60 days** of the date of this notice. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this tentative denial of claim will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

If you have questions regarding this matter, write or call us weekdays between 8 a.m. and 4:30 p.m. Our address and telephone number are below.

Alexandria Case  
Revenue Tax Specialist I

SALES TAX PROCESSING DIVISION 2-242  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19013  
SPRINGFIELD IL 62794-9013

217 782-7517  
217 524-9001 fax

Duplicate

Claim Detail

Document Number    Transaction Number    Amount Claimed

15-268-134-05-002	839643848	872.00
15-268-134-05-002	110837499	383.00
15-268-134-05-002	840544746	986.00
15-268-134-05-002	128996717	648.00
15-268-134-05-002	121433957	473.00
15-268-134-05-002	840839120	760.00
15-268-134-05-002	841977002	763.00
15-268-134-05-002	121434179	421.00
15-268-134-05-002	121433668	453.00
15-268-134-05-002	127480598	862.00
15-268-134-05-002	128993565	742.00
15-268-134-05-002	128997053	962.00
15-268-134-05-002	128996469	742.00
15-268-134-05-002	476152715	191.00
15-268-134-05-002	125042069	363.00
15-268-134-05-002	125040295	640.00
15-268-134-05-002	128993680	543.00
15-268-134-05-002	131468571	968.00
15-268-134-05-002	128993474	721.00
15-268-134-05-002	128992872	562.00
15-268-134-05-002	121436497	669.00
15-268-134-05-002	112871033	891.00
15-268-134-05-002	110837598	214.00
15-268-134-05-002	117409821	292.00
15-268-134-05-002	131470593	883.00
15-268-134-05-002	128145661	355.00
15-268-134-05-002	110840683	343.00
15-268-134-05-002	128993151	1060.00
15-268-134-05-002	117406280	449.00
15-268-134-05-002	135546174	140.00
15-268-134-05-002	135542439	903.00
15-268-134-05-002	128995370	762.00
15-268-134-05-002	131469660	1160.00
15-268-134-05-002	471345090	335.00
15-268-134-05-002	121431308	401.00
15-268-134-05-002	841284292	1048.00
15-268-134-05-002	112871173	444.00
15-268-134-05-002	125040394	712.00
15-268-134-05-002	135547230	910.00
15-268-134-05-002	142671460	954.00
15-268-134-05-002	110837507	775.00
15-268-134-05-002	125037275	524.00
15-268-134-05-002	841797889	755.00
15-268-134-05-002	471344754	175.00
15-268-134-05-002	131468811	776.00

MTC-29TRN (R-10/13)

15-268-134-05-002	839931342	111.00
15-268-134-05-002	840187017	1009.00
15-268-134-05-002	135542645	554.00
15-268-134-05-002	840887111	1043.00
15-268-134-05-002	476144027	177.00
15-268-134-05-002	131472458	733.00
15-268-134-05-002	127480150	422.00

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION  
TAX AND MISCELLANEOUS REMEDIES SECTION

CITIBANK, N.A.,  
a national banking association,

Plaintiff,

v.

Case No. 13 L 050072

ILLINOIS DEPARTMENT OF REVENUE;  
and BRIAN HAMER, as Director of the Illinois  
Department of Revenue,

Defendants.

ORDER and OPINION

I. OPINION

Plaintiff Citibank, N.A., (“Plaintiff”) filed a complaint seeking judicial review of the Illinois Department of Revenue’s (“Department”) denial of Plaintiff’s claim for refund of Retailers’ Occupation Tax (“ROT”), pursuant to 86 Ill. Admin. Code § 130.1960.<sup>1</sup> The issue before the Court is whether Plaintiff is entitled to a refund of tax that is equal to a portion of the ROT remitted to the Department by retailers from whom certain of Plaintiff’s credit account customers made retail purchases of tangible personal property, and which accounts were later written off by Plaintiff as bad debts.

FACTS

In lieu of a hearing, the parties submitted a Stipulation of Facts (“Stip.”) and exhibits from which the following facts are taken.

Plaintiff provided sales financing programs to numerous retailers (“Retailers”) in the State of Illinois. Stip. ¶ 2. As part of their normal business, the Retailers offered their customers

<sup>1</sup> Subsequent to filing its refund claim, Citicorp Trust Bank merged into Citibank, N.A., which is now the successor to Citicorp Trust Bank, fsb.

the option of financing their purchases, including the amount of Illinois tax due on such purchases, on a credit basis. Stip. ¶ 2.

Plaintiff entered into agreements (“Agreements”) with Illinois Retailers which provide that Plaintiff would originate or acquire consumer charge accounts and receivables from such Retailers on a non-recourse basis. Stip. ¶ 2. Under those Agreements, Plaintiff acquired any or all applicable contractual rights relating thereto, including the right to any and all payments from the customers and the right to claim ROT refunds or credits. Stip. ¶ 2.

Under the Agreements, when a customer financed a purchase using the consumer’s account, Plaintiff remitted to the Retailer the amount that the customer financed. Stip. ¶ 3. This included some or the entire purchase price, depending on whether the customer financed the entire purchase or only a portion of the purchase, and the amount of the tax that the purchaser owed based on the selling price of the property purchased. Stip. ¶ 3. The Retailers then remitted the complementary amount of ROT they owed to the State for each transaction. Stip. ¶ 3.

Some of the customers subsequently defaulted on their accounts (“Accounts”), and it is these defaulted Accounts that are the subject of Plaintiff’s claim in this case. Stip. ¶ 4. When the customers defaulted on the Accounts, they did not repay the full amount of the purchase price and the ROT, and a portion of such amounts remain unpaid. Stip. ¶ 4.

After reasonable attempts to collect the balances that remained on the defaulted Accounts, Plaintiff determined that they were worthless. Stip. ¶ 5. All of the surrounding circumstances indicated that the debts were uncollectible and that legal action to enforce payment would not result in the satisfaction of execution on a judgment. Stip. ¶ 5. Plaintiff wrote the remaining balances off as worthless on its books and records. Stip. ¶ 5. It was further

stipulated that Plaintiff, and not the Retailers, “bore the economic loss on these defaulted accounts.” Recommendation for Disposition ¶ 6.

Plaintiff claimed the remaining, unpaid, balances on these Accounts as bad debts, pursuant to § 166 of the Internal Revenue Code, on its United States corporate income tax returns. Stip. ¶ 6. These bad debts were written off over the period of January 1, 2008 to December 31, 2009, and claimed on Plaintiff’s United States corporate income tax returns covering this period. Stip. ¶ 6.

On September 28, 2010, Plaintiff filed a claim for a refund or credit pursuant to 86 Ill. Admin. Code § 130.1960. Stip. ¶ 7. The claim was for the period from January 1, 2008 through December 31, 2009, in the amount of \$1,600,853.32. Stip. ¶¶ 1, 7. That amount is the portion of Account balances that were written off as bad debts that is attributable to the ROT. Stip. ¶ 7. Of this total amount, \$640,123.00 is attributable to the period of January 1, 2008 through December 31, 2008 and \$960,731.00 is attributable to the period of January 1, 2009 through December 31, 2009. Stip. ¶ 7.

The Department denied Plaintiff’s claim on January 31, 2011. Stip. ¶ 8. Plaintiff then protested the denial and asked for an administrative hearing. Stip. ¶ 9. The matter proceeded to hearing before Administrative Law Judge John E. White (“ALJ”). On December 11, 2012, the ALJ issued a Recommendation for Disposition in which he found Plaintiff was not entitled to a refund. On December 13, 2012, the Department issued a Final Determination of Claim, in accordance with the ALJ’s recommendation, denying Plaintiff’s refund claim.

## STANDARD OF REVIEW

The standard of review of an administrative agency's decision depends on whether the issue presented is a question of fact, a question of law, or a mixed question of law and fact. *Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 272, 917 N.E.2d 899, 904 (2009). When reviewing an administrative agency's decision, a question of fact is overturned only where the administrative decision is against the manifest weight of the evidence. *Decatur Sports Found. v. Dep't of Revenue*, 156 Ill. App. 3d 623, 627, 509 N.E.2d 1103, 1105 (4th Dist. 1987). An administrative agency's findings and conclusions on questions of fact are *prima facie* true and correct and will not be disturbed unless they are against the manifest weight of the evidence. *Cent. Furniture Mart, Inc. v. Johnson*, 157 Ill. App. 3d 907, 910, 510 N.E.2d 937, 939 (1st Dist. 1987).

A pure question of law exists where the issue is the proper interpretation of the meaning of the language of a statute. *Cinkus v. Vill. of Stickney Municipal Officers Electoral Bd.*, 228 Ill. 2d 200, 210, 886 N.E.2d 1011, 1018 (2008). An agency's rulings on questions of law are reviewed *de novo*. *Exelon Corp.*, 234 Ill. 2d at 272.

## DISCUSSION

The issue before this Court is whether Plaintiff is entitled to a refund of tax that is equal to a portion of the ROT remitted to the Department by retailers from whom certain of Plaintiff's credit account customers made retail purchases of tangible personal property, and which accounts were later written off by Plaintiff as bad debts. Because the proper interpretation of a statute is a question of law, the Court applies the *de novo* standard of review. *Id.*

"The primary rule of statutory construction is to give effect to legislative intent by first looking at the plain meaning of the language." *Davis v. Toshiba Mach. Co.*, 186 Ill. 2d 181, 184,



710 N.E.2d 399, 401 (1999). Where statutory language is clear and unambiguous, a court must give it effect as it is written “without reading into it exceptions, limitations or conditions that the legislature did not express.” *Id.* at 184-85, (citation and internal quotations omitted). Courts refuse to read meanings into statutory language that were not specifically included. *See Van’s Material Co. v. Dep’t of Revenue*, 131 Ill. 2d 196, 545 N.E.2d 695 (1989). Where the language of a statute is clear and unambiguous, a court must apply it as written, without resort to extrinsic aids of statutory construction. *CBS Outdoor, Inc. v. Dep’t of Transp.*, 2012 IL App (1st) 111387, ¶ 29, 970 N.E.2d 509, 514 (1st Dist. 2012).

It is a generally recognized principal that courts give “substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with the administration and enforcement of the statute” as these interpretations express an informed source for ascertaining legislative intent. *Illinois Consol. Tel. Co. v. Illinois Commerce Comm’n*, 95 Ill. 2d 142, 152-53, 447 N.E.2d 295, 300 (1983) (citations omitted). Administrative regulations have the force of law and are construed under the same standards governing statutory construction. *CBS Outdoor, Inc.*, 2012 IL App (1st) 111387 at ¶ 27. The court’s objective in interpreting an agency regulation is to ascertain and give effect to the intent of the agency. *Id.* The most reliable indicator of an agency’s intent is the language of the statute itself and, where the language is clear and unambiguous, a court must apply it as written, without resort to extrinsic aids of statutory construction. *Id.* When an act defines the terms to be used in it, those terms must be construed according to the definitions given them in the act. *Laborer’s Int’l Union of North America, Local 1280 v. Illinois State Labor Relations Bd.*, 154 Ill. App. 3d 1045, 1059, 507 N.E.2d 1200, 1209 (5th Dist. 1987).

When interpreting a statute, an administrative agency cannot expand statutory language by implication beyond its clear import. See *Van's Material Co.*, 131 Ill. 2d 196 (court refused to find that "manufacturing facility" was limited to manufacturing that occurred in a fixed location); *Canteen Corp. v. Dep't of Revenue*, 123 Ill. 2d 95, 525 N.E.2d 73 (1988) (court adopted the definition of "premises" which was expressed in the Department's regulation and refused to extend or restrict it as the parties asked); *Nokomis Quarry Co. v. Dep't of Revenue*, 295 Ill. App. 3d 264, 692 N.E.2d 855 (5th Dist. 1998) (The court refused to use dictionary definitions where the statute used the term "commonly regarded as manufacturing."). In each of those cases a term was defined by statute. In each of those cases the Department attempted to add to, or subtract from, the statute's language. The Illinois Supreme Court found each of the attempts to add or subtract language from the statute to be unduly restrictive and not within the scope of the statute.

Similarly, a regulation cannot create requirements, exceptions, limitations or conditions that conflict with the express legislative intent as reflected in the statutory language. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 479, 639 N.E.2d 1282, 1287 (1994). Therefore, an administrative agency that promulgates regulations cannot extend its authority or impose a limitation on a statute that the legislature did not prescribe. *Wesko Plating, Inc. v. Dep't of Revenue*, 222 Ill. App. 3d 422, 425-26, 584 N.E.2d 162, 164 (1st Dist. 1991).

Section 6b of the ROTA provides that the Department's denial of a taxpayer's claim for credit constitutes prima facie proof that the taxpayer is not entitled to a credit. 35 ILCS 120/6b. The Department's prima facie case is a rebuttable presumption. This presumption is overcome, and the burden shifts back to the Department to prove its case, only after a taxpayer presents evidence that is consistent, probable and identified with its books and records, to show that the

Department's determinations are wrong. *Copilevitz v. Dep't of Revenue*, 41 Ill. 2d 154, 156-57, 242 N.E.2d 205, 206-07 (1968).

In Illinois, "it is well settled that in the absence of statute, taxes voluntarily paid cannot be recovered no matter how meritorious the claim." *Peoples Store of Roseland v. McKibbin*, 379 Ill. 148, 152, 39 N.E.2d 995, 998 (2009) (citing *People ex rel. Switzer v. Orrington Co.*, 360 Ill. 289 (1935)). Section 6 of the ROTA "is a special remedial statute;" and is limited to those persons, normally retailers, who have paid the tax pursuant to the act by reason of mistake, a tax that was not actually due. *Peoples Store of Roseland*, 379 Ill. at 152.

Plaintiff argues that it is entitled to a refund pursuant to Section 6 of the ROTA, which provides, in pertinent part:

§ 6. Credit memorandum or refund. If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person died or became a person under legal disability, to his or her legal representative, as such. ... Claims submitted by the retailer are subject to the same restrictions and procedures provided for in this Act.

\* \* \*

No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears (a) that the claimant bore the burden of such amount and has not been relieved thereof nor reimbursed therefor and has not shifted such burden directly or indirectly through inclusion of such amount in the price of the tangible personal property sold by him or her or in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he or she or his or her legal representative may be relieved of the burden of such amount, be reimbursed therefor or may shift the burden thereof; or (b) that he or she or his or her legal representative has repaid unconditionally such amount to his or her vendee (1) who bore the burden thereof and has not shifted such burden directly or indirectly, in any manner whatsoever; (2) who, if he or she has shifted such burden, has repaid unconditionally such amount to his own vendee; and (3) who is not entitled to receive any reimbursement therefor from any other source than from his or her vendor, nor to be relieved of such burden in any manner whatsoever. No credit may be allowed or refund made for any amount

paid by or collected from any claimant unless it appears that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser and retained by the claimant with respect to the same transaction under the Use Tax Act.

35 ILCS 120/6.

The Department promulgated 86 Ill. Admin. Code § 130.1960, which provides, in pertinent part:

§ 130.1960 Finance Companies and Other Lending Agencies – Installment Contracts – Bad Debts

\* \* \*

d) Bad Debts

1) In case a retailer repossesses any tangible personal property and subsequently resells such property to a purchaser for use or consumption, his gross receipts from such sale of the repossessed tangible personal property are subject to Retailers' Occupation Tax. He is entitled to a bad debt credit with respect to the original sale in which the default has occurred to the extent to which he has paid Retailers' Occupation Tax on a portion of the price which he does not collect, or which he is not permitted to retain because of being required to make a repayment thereof to a lending agency under a "with recourse" agreement.

\* \* \*

2) Retailers who incur bad debt on any tangible personal property that is not repossessed may also obtain bad debt credit as provided in subsections (d)(1) and (3).

3) In the case of tax paid on an account receivable that becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the Retailers' Occupation Tax Act, on the date that the Federal income tax return or amended return on which the receivable is written off is filed.

86 Ill. Admin. Code § 130.1960 (2000); 24 Ill. Reg. 18376 (eff. December 1, 2000).

Plaintiff argues that the bad debt regulation allows a retailer to claim a refund or deduction where (1) ROT was remitted on the sale and (2) the account is written off as uncollectible for federal tax purposes. It is undisputed that, had the Retailers provided finance

arrangements to their customers for purchases of tangible personal property, and the customers then defaulted on those, that the Retailers would be entitled to a refund of the tax. The issue before this Court is whether Plaintiff, through its non-recourse Agreements with Retailers whereby all rights to any and all payments from the customers and the right to claim ROT refunds or credits were assigned to it, is entitled to the refund.

In his Recommendation for Disposition, the ALJ went through an in-depth analysis of whether Plaintiff is a retailer or steps into the shoes of the retailer for purposes of obtaining a refund. The Court believes that this analysis is misplaced. The key issue in this case is not whether Plaintiff is a retailer, or steps into the shoes of one, but whether Plaintiff bore the burden of the tax and is therefore entitled to a refund. It is Section 130.1960(d)(3) that is controlling in this matter and not Sections (d)(1) or (2) as the ALJ stated. However, even if the issue was whether Plaintiff was a retailer, the Retailers properly assigned all their rights to the Plaintiff, who therefore stepped into the shoes of the Retailer and is entitled to the refund.

Pursuant to Section 130.1960(d)(3), when a tax is paid on an account receivable which becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the ROTA. 86 Ill. Admin. Code § 130.1960. Section (d)(3) is not limited to accounts receivable held only by retailers, nor can it be. An administrative agency that promulgates regulations cannot impose a limitation on a statute that the legislature did not prescribe. *Wesko Plating, Inc.*, 222 Ill. App. 3d at 425-26.

The ALJ stated that Section 130.1960(d)(2) requires that the party seeking the refund be a retailer. The Court disagrees. First, as stated before, Section 130.1960(d)(3) is controlling in this case and not (d)(2). Second, it is not required that the party seeking the credit or refund be the retailer who remitted ROT in the first place. Because the legislature did not limit Section 6

of ROTA to retailers, the Department's regulation, 86 Ill. Admin. Code § 130.1960, cannot limit Section 6 to retailers. In this case, Plaintiff paid tax on an account receivable that became a bad debt. Therefore, they are allowed to file a claim for credit in accordance with Section 6 of the ROTA.

Section 6 of ROTA clearly states that a claimant is entitled to a credit or refund for any amount of tax or penalty or interest that has been paid which was not due under the Act. 35 ILCS 120/6. The plain and ordinary meaning of Section 6 shows that the Act does not contemplate that only a retailer can obtain a refund. For purposes of this case, Plaintiff is entitled to a credit or refund as long as it appears that: (1) Plaintiff bore the burden of such amount; (2) Plaintiff has not been reimbursed for the tax or shifted the burden of the tax; and (3) that no understanding or agreement exist whereby Plaintiff may be relieved of the burden of such amount, be reimbursed therefor or may shift the burden thereof. *Id.*

Section 6 of ROTA allows recovery or credit for an overpayment of sales or use taxes only "where the taxpayer himself has borne the burden of the tax, either originally or by reason of an unconditional repayment." *W.F. Monroe Cigar Co. v. Dep't of Revenue*, 50 Ill. App. 3d 161, 162, 365 N.E.2d 574, 575 (1st Dist. 1977). In a normal situation under ROTA, the Retailers shift the burden of the tax to the consumer by including it in the purchase price. The Court notes that if the burden can be shifted to the consumer than it can similarly be shifted to a finance company such as Plaintiff.

In this case, the parties stipulated that, under the Agreements, when a customer financed a purchase using the consumer's account, Plaintiff remitted to the Retailer the amount that the customer financed, including some or the entire purchase price and the amount of the tax that the purchaser owed based on the selling price of the property purchased. The parties further

stipulated that some of the customers subsequently defaulted on their Accounts and therefore did not repay the full amount of purchase price and the ROT. Thus, it follows that Plaintiff bore the burden of the tax, as it in fact paid the tax, and was not reimbursed for the tax as the customer defaulted on the Account. As to the third requirement, Plaintiff made reasonable attempts to collect the balances owed it but was unsuccessful. The debts became uncollectible and legal action to enforce payment would not result in the satisfaction of execution on a judgment. Accordingly, at the time Plaintiff filed its claim for refund, no understanding or agreement existed whereby Plaintiff could be relieved of the burden of the tax or reimbursed for the tax payment. Therefore, Plaintiff has met the requirements of Section 6 of ROTA for obtaining a credit or refund.

The ALJ noted that the Retailers would only be entitled to a refund if they first unconditionally repaid to the purchaser the use tax they had previously collected from them. 35 ILCS 120/6. Therefore, according to the ALJ, Plaintiff would have to repay the tax to the purchaser before being allowed to claim the tax. The Court cannot agree. Repay is defined as "to pay back; refund; restore; return." Black's Law Dictionary 1167 (5th ed. 1979). This definition implies that the purchaser must have first paid the tax to Plaintiff. However, the stipulated facts of this case provide that the customers in the transactions at issue here defaulted on their Accounts, and therefore did not pay to Plaintiff the full amount of tax. Plaintiff cannot repay something it never received in the first place. Furthermore, Plaintiff is not seeking a refund for tax amounts paid by the customers. It is only seeking a refund of those amounts that the customers failed to pay. Therefore, Plaintiff is not required to refund to the purchaser the use tax that has been collected.

The ALJ stated that Plaintiff's argument that Illinois law recognizes a broad right to assign claims was misplaced. The ALJ explained that Section 130.1960 expresses two ways a bad debt might occur: (1) the Retailers would be entitled to a bad debt credit had they been the ones that extended financing to their customers, and had the customers' subsequent defaults thereby actually caused the Retailers to be unable to collect all of the selling price of the goods sold; and (2) the Retailers would have been entitled to a bad debt credit if the assignments to Plaintiff were "with recourse." 86 Ill. Admin. Code § 130.1960. The latter does not apply in this case as the Agreements between Plaintiff and the Retailers were "without recourse."

The general rule is that claims against the government are assignable in the absence of language in the statute prohibiting it. *People ex rel. Stone v. Nudelman*, 376 Ill. 535, 539, 34 N.E.2d 851, 853 (1940). There is no such prohibition contained in Section 6 or ROTA or 86 Ill. Admin. Code § 130.1960. An "assignment operates to transfer to the assignee all of the assignor's right, title, or interest in the thing assigned." *Estate of Martinek v. Martinek*, 140 Ill. App. 3d 621, 629, 488 N.E.2d 1332, 1337 (2d Dist. 1986). "The assignee, by acquiring the same rights as the assignor, stands in the shoes of the assignor." *Id.*

Through their Agreements, the Retailers assigned all of their rights under the Accounts to Plaintiff on a non-recourse basis. As assignment is not prohibited in Section 6 of the ROTA or 86 Ill. Admin. Code § 130.1960, Plaintiff stepped into the shoes of the Retailers. As the ALJ stated, had the Retailers been the ones that extended financing to their customers, and had the customers' subsequent defaults thereby actually caused the Retailers to be unable to collect the entire selling price of the goods sold, the Retailers would be entitled to a bad debt credit. As a result of the assignment of rights, Plaintiff steps into the shoes of the Retailers and is entitled to a bad debt credit if they extend financing to customers and the customers subsequently default,



thereby causing Plaintiff to be unable to collect all of the selling price of the goods. Plaintiff is therefore entitled to a bad debt credit or refund.

As a final point, the ALJ found that Plaintiff is not entitled to a bad debt credit or refund as it failed to submit the detailed information required to be included on a claim form. The Court disagrees. 35 ILCS 120/6a provides, in pertinent part:

Sec. 6a. Claims for credit or refund shall be prepared and filed upon forms provided by the Department. Each claim shall state: (1) The name and principal business address of the claimant; (2) the period covered by the claim; (3) the total amount of credit or refund claimed, giving in detail the net amount of taxable receipts reported each month or other return period used by the claimant as the basis for filing returns in the period covered by the claim; (4) the total amount of tax paid for each return period; (5) receipts upon which tax liability is admitted for each return period; (6) the amount of receipts on which credit or refund is claimed for each return period; (7) the tax due for each return period as corrected; (8) the amount of credit or refund claimed for each return period; (9) reason or reasons why the amount, for which the claim is filed, is alleged to have been paid in error; (10) a list of the evidence (documentary or otherwise) which the claimant has available to establish his compliance with Section 6 [35 ILCS 120/6] as to bearing the burden of the tax for which he seeks credit or refund; (11) payments or parts thereof (if any) included in the claim and paid by the claimant under protest; (12) sufficient information to identify any suit which involves this Act, and to which the claimant is a party, and (13) such other information as the Department may reasonably require. Where the claimant is a corporation or limited liability company, the claim filed on behalf of such corporation or limited liability company shall be signed by the president, vice-president, secretary or treasurer, by the properly accredited agent of such corporation, or by a manager, member, or properly accredited agent of the limited liability company.

35 ILCS 120/6a.

The ALJ found that Plaintiff failed to provide detailed financial information on its claim forms. First, the ALJ states that Plaintiff failed to provide information that identifies the transactions for which it claims to have paid tax in error. The Court finds no such requirement in Section 6a nor in the Department's Form, ST-1-X Amended Sales and Use Tax and E911 Surcharge Return. Similarly, the ALJ stated that Plaintiff provided no documentary evidence at all to support its entries. Again, no such requirement is present in Section 6a. Section 6a merely

requires that the claimant provide a "list of evidence," not the evidence itself. Finally, the ALJ found that nothing on Plaintiff's claim forms show which Retailers filed original ST-1 returns, what entries were made on such returns, or where those Retailers were doing business in Illinois. None of this information is required by Section 6a or Form ST-1-X.

**II. ORDER**

This matter having been fully briefed, and the Court being fully apprised of the facts, law and premises contained herein, it is ordered as follows:

- A. Plaintiff Citibank, N.A. is entitled to a refund pursuant to 35 ILCS 120/6;
- B. The ruling of the Illinois Department of Revenue is reversed.

Judge Patrick J. Sherlock

OCT 17 2013

Circuit Court - 1942

ENTERED: \_\_\_\_\_

Judge Patrick Sherlock