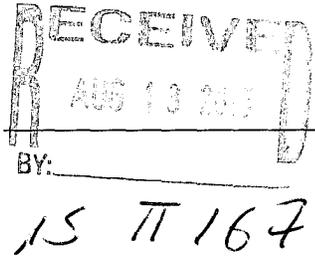


**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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VILLAGE MOTORS LLC d/b/a )  
LIBERTYVILLE TOYOTA )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
Respondent. )

Case No.



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**PETITION**

Petitioner VILLAGE MOTORS LLC d/b/a LIBERTYVILLE TOYOTA (“Village Motors”) petitions this Tribunal for review of a Notice of Tax Liability issued by Respondent ILLINOIS DEPARTMENT OF REVENUE.

**STATEMENT OF JURISDICTION**

1. Village Motors brings this petition pursuant to the Illinois Independent Tax Tribunal Act of 2012. 35 ILCS 1010 et seq.
2. This Tribunal has jurisdiction because this matter involves a Notice of Tax Liability which was issued by the Department on June 19, 2015, and which asserts a Retailers' Occupation Tax Act liability in excess of \$15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45.
3. The Notice of Tax Liability is for a Retailers' Occupation Tax Act liability of \$50,174 for the period of July 1, 2011 to December 31, 2013 and proposed penalties and interest of \$11,005 and \$2,895.97, respectively. A copy of the Notice of Tax Liability is attached as Exhibit A.

## THE PARTIES

4. Petitioner is Village Motors LLC d/b/a/ Libertyville Toyota, 1180 S. Milwaukee Ave., Libertyville, Illinois 60048-3717. Its phone number is (224) 993-9001.

5. Petitioner's attorneys are Fred Marcus, Horwood, Marcus & Berk Chtd., 500 West Madison Street, Suite 3700, Chicago, Illinois 60661, (312) 606-3200.

6. Petitioner's tax identification number is 65-0944660.

## FACTS

7. Village Motors was engaged in the business of selling and leasing motor vehicles at retail in Illinois.

8. In order to provide financing to its customers and facilitate more sales, Village Motors entered into an agreement with Toyota Motor Credit Corporation. Toyota Motor Credit Corporation agreed to purchase motor vehicles from Village Motors for the purpose of leasing those motor vehicles to Village Motors customers.

9. These vehicle leasing transactions would begin with Village Motors entering into a lease directly with one of its customers. Upon the execution of the lease, Village Motors sold the vehicle to Toyota Motor Credit Corporation and assigned the lease to Toyota Motor Credit Corporation.

10. Under Illinois law, Retailers' Occupation Tax is imposed on the sale of the vehicle from Village Motors to Toyota Motor Credit Corporation rather than on the lease payments from the lessee to the lessor. Accordingly, after the sale of each vehicle to Toyota Motor Credit Corporation, Village Motors timely submitted a sales tax transaction return ("ST-556") to the Department and paid the tax that was due.

11. In computing the sales price upon which Retailers' Occupation Tax was due, Village Motors applied certain advance trade credits that Toyota Motor Credit Corporation possessed as a result of vehicles that it had previously traded in to Village Motors. These advance trade in credits are specifically authorized by Illinois law, and they reduce the sales price upon which the Retailers' Occupation Tax or Use Tax is computed.

12. ILCS § 105/2 and ILCS § 120/1 define "Selling price" as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, ..." (emphasis added).

13. The Department has promulgated a regulation that addresses trade in credits. 86 Ill Admin. Code § 130.455. The Department's regulation specifically authorizes two types of trade-in credits: so-called "contemporaneous" trade-ins (i.e., where a customer trades in a vehicle at the same time that the customer purchases a new vehicle) and "advance" trade-ins (i.e., where a customer trades in a vehicle but does not purchase a new vehicle until a later time).

14. With respect to advance trade-in credits, the regulation provides that:

d) Advance Trade-ins

A transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, *the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advanced trade-in transaction.* Advance trade credits not used within the time specified expire and may not be used subsequent to the 9 month credit period. Advance trade credits are non-transferable.

1) In order to apply the trade-in credit toward the purchase price of a vehicle, the documents recording the purchaser's contractual obligation to purchase need not specify the name, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase within the specified amount of time.

2) Advance trade-in credit given by the dealer to the purchaser in the amount of the value of or credit given for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash, and will not affect the purchaser's ability to apply the advance trade credit toward the purchase of one or more vehicles, so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a vehicle or vehicles purchased. (Section 1 of the Act)

3) Documentation evidencing an advance trade-in transaction must include the following: the contract establishing the value of or credit given for a traded-in vehicle, the obligation to purchase a vehicle, and the date of expiration of the advance trade-in credit; the bill of sale for the traded in vehicle; and the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade.

86 Ill. Admin. Code 130.455(d) (emphasis added).

15. That is, to obtain an advance trade credit under the Department's regulation, a person trading in a vehicle must enter into a written contract with the dealer promising to use the credit within nine months of the trade. 86 Ill. Admin. Code § 130.455(d).

16. Toyota Motor Credit Corporation traded in various vehicles and entered into advance trade in credit agreements with Village Motors which Toyota Motor Credit Corporation used when purchasing the vehicles that are the subject of the Department's Notice of Tax Liability.

17. Toyota Motor Credit Corporation operated its consumer vehicle leasing business through a wholly owned titling entity and directed Village Motors to list the name of the titling entity as the owner of the replacement vehicles that it purchased.

18. Toyota Motor Credit Corporation at all times was the owner of the Toyota vehicles titled in the name of Toyota Motor Credit Corporation and the titling entity.

19. Some of the vehicles that were traded in to create advance trade-in credits were titled in the name of a Toyota legal entity while the replacement vehicles that were purchased were titled in the name of a different Toyota legal entity.

20. The Department audited Village Motors for the periods of July 1, 2011 to December 31, 2013. On June 19, 2015, the Department issued a Notice of Tax Liability asserting an additional Retailers' Occupation Tax Act liability.

21. The Department's proposed tax liability stems from its disallowance of Village Motors' application of these advance trade credits to reduce the sales price subject to the Retailers' Occupation Tax that was due on various sales made to Toyota Motor Credit Corporation.

**COUNT I**  
**THE DEPARTMENT'S ASSESSMENT IS CONTRARY TO ILLINOIS LAW**

22. Petitioner realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 21 inclusive.

23. The Department disallowed Village Motors' application of the advance trade credits on Toyota Motor Credit Corporation's purchases due to the way in which Toyota Motor Credit Corporation titled the vehicles that it purchased. The Department's disallowance of these advance trade credits is legally erroneous and cannot be sustained.

24. Toyota Motor Credit Corporation titled vehicles that it purchased in the name of Toyota Motor Credit Corporation.

25. However, Toyota Motor Credit Corporation also titled the vehicles that it purchased in the name of another Toyota entity, primarily a titling entity, thereby creating a difference in some cases, between the name on the title of the vehicles it traded in to generate the

advanced trade-in credits and the name on the title of the vehicles that it purchased using those credits.

26. Regardless of how Toyota Motor Credit Corporation titled the newly purchased vehicles, Toyota Motor Credit Corporation was the beneficial owner of the vehicles. That is, regardless of how the vehicles were titled, the incidents of ownership continued to rest with Toyota Motor Credit Corporation.

27. Illinois law is clear that the mere name on a title is not determinative of ownership. Under well-settled Illinois law, a “certificate of title is evidence of title, but it is not conclusive and one can own an automobile though the certificate of title is in the name of another.” *Hall v. Country Casualty Ins. Co.*, 204 Ill.App.3d 765, 780 (1990); *Dan Pilson Auto Center, Inc. v. DeMarco*, 156 Ill.App.3d 617, 620-21 (1987) (“Consequently, it is possible that one can own an automobile even though the certificate of title is in the name of another”).

28. This principle has been widely applied in the area of taxation. *See e.g., People v. Chicago Title and Trust Co.*, 75 Ill.2d 479 (1979) (stating in the context of a revenue statute that “[w]hile title may be a factor in determining ownership it is not decisive.”); *Northern Illinois University Foundation v. Sweet*, 237 Ill.App.3d 28, 35 (1992) (“Control of the property and the right to its benefits are more significant than legal title alone in determining the liability for real estate taxes.”)

29. It is “the intent of the parties involved, and not such statutory prerequisites which determine ownership.” *Dan Pilson Auto Center, Inc.*, 156 Ill.App.3d at 620. *See also Chicago Title and Trust Co.*, 75 Ill.2d at 492 (“Of far greater importance [than who is reflected as the owner on the title] is control of the property and the right to its benefits.”); *Northern Illinois*

*University Foundation*, 237 Ill.App.3d at 35 (“The primary incidents of ownership include ... the right to alienate the property at will.”)

30. The Department's regulation does not place any requirement on how vehicles that are purchased with advance trade credits must be titled. 86 Ill. Admin. Code § 130.455. It does, however, contain a provision that provides that: "Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade." *Id.*

31. In interpreting and applying this provision, the Department casts aside a determination of the ownership of the vehicles and instead replaces this analysis with the sole requirement that the vehicles that were traded in to obtain the advance trade in credits must be titled in the same name as the vehicles that were purchased with those credits.

32. Such a requirement is not present in the plain language of the regulation. Nor is it present in the broad language of the statute, which permits both contemporaneous and advance trade-ins without any regard to ownership or how the vehicles were titled.

33. Therefore, the Department's proposed tax liability is legally erroneous because it is based on how the vehicles were titled rather than how they were owned and because the facts surrounding the purchases show that Toyota Motor Credit Corporation was the owner of both the vehicles that were traded in and the vehicles that were purchased using the advance trade credits.

34.

**THEREFORE**, Village Motors requests that the Tribunal:

a) Find that the Department's proposed tax assessment is legally erroneous and that Village Motors correctly applied the advance trade credits when computing the Retailers' Occupation Tax that was due on the vehicles sold to Toyota Motor Credit Corporation; and

- b) Order such further relief as the Tribunal deems appropriate.

**COUNT II**  
**THE PORTION OF 86 ILL. ADM. CODE 130.455 THAT PURPORTS TO PROHIBIT THE TRANSFER OF ADVANCE TRADE CREDITS IS INVALID**

35. Petitioner realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 21 inclusive.

36. Even if the Tribunal were to find that Toyota Motor Credit Corporation did not own the vehicles that were purchased using the advance trade in credits or that the Department's regulation otherwise prohibits Village Motors from applying the advance trade in credits, the Tribunal should invalidate the portion of the regulation that purports to prohibit the transfer of advance trade credits.

37. Neither the Retailers' Occupation Tax Act or the Use Tax Act differentiates between contemporaneous or advance trade ins. As previously described, "selling price" is defined as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, ..." ILCS § 105/2, § 120/1.

38. That is, the statutes only refer to trade-ins. The language of the statutes do not even refer to advance or contemporaneous trade-ins separately, let alone provide any basis for imposing substantively different requirements for these two types of trade-ins. Because there is no statutory authorization for treating advance trade-ins differently from contemporaneous trade-ins, the Department cannot create this distinction in its regulation.

39. The Department has the authority “to make, promulgate and enforce reasonable rules and regulations relating to the administration and enforcement of the provisions of the Retailers’ Occupation Tax Act.” *Du-Mont Ventilating Co. v. Department of Revenue*, 73 Ill. 2d 243, 247 (1978). However, the Department’s rules “can neither limit nor extend the scope of a statute.” *Id.*

40. In accordance with the broad statutory language regarding trade-ins, the Department's regulation expressly permits the transfer of contemporaneous trade credits. That is, it permits a vehicle owned by one party to be traded in and applied to reduce the taxable "sale price" of a vehicle purchased by a second party so long as the trade is made contemporaneously with the purchase. 86 Ill. Admin. Code § 130.455.

41. However, the Department's regulation purports to limit the transfer of advance trade credits by stating that “[a]dvance trade credits are non-transferable.” 86 Ill. Admin. Code 130.455(d). Since there is no statutory authorization for treating advance trade-ins differently than contemporaneous trade-ins, this portion of the Department's regulation impermissibly limits the scope of the Retailers' Occupation Tax Act and is therefore invalid.

**THEREFORE**, Village Motors requests that the Tribunal:

- a) Find that if Toyota Motor Credit Corporation’s titling of the purchased vehicles in the name of a different Toyota entity constitutes a prohibited transfer of the advance trade-in credits under the Department's regulation, that that portion of the regulation is invalid and that Village Motors is entitled to apply the advance trade credits when computing the Retailers' Occupation Tax due on the sales; and
- b) Order such further relief as the Tribunal deems appropriate.

**COUNT III**  
**ATTORNEYS' FEES AND EXPENSES UNDER 5 ILCS 100/10-55(C)**

42. Petitioner realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 21 inclusive.

43. Section 10-55c of the Illinois Administrative Procedure Act, 5 ILCS 100/10-55(c), provides that:

In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees.

44. This provision of law authorizes a party to recover its attorney's fees if the Tribunal invalidates a regulation because the agency exceeded its statutory authority in promulgating the regulation.

**THEREFORE**, Village Motors requests that, if the Tribunal invalidates a portion of the regulation as requested in Count II, that the Tribunal award Village Motors its reasonable expenses of litigation, including attorney's fees.

**COUNT IV**  
**THE TRIBUNAL SHOULD DECLINE**  
**TO FOLLOW THE DEPARTMENT'S REGULATION**

45. Petitioner realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 21 inclusive.

46. Even if the Tribunal finds that the Department's regulation is valid and prohibits Village Motors from applying the advance trade credits to the vehicles that Toyota Motor Credit Corporation purchased, it should nevertheless decline to follow the regulation and find that Village Motors is entitled to apply the advance trade credits.

47. Under Illinois law, valid regulations are not binding on the courts. They are, at most, entitled to some deference or respect. *American Stores Co.*, 296 Ill.App.3d at 299-300 (“An agency’s interpretation of a statute it is charged with administering, where based on agency expertise, is entitled to *some deference*.”) (emphasis added); *Du-Mont Ventilating Co.*, 73 Ill.2d at 247 (“The rule merely interprets the scope of the statutory exemption provision, and as such is entitled to *some respect* as an administration interpretation of the statute, but it is not binding on the courts.”) (emphasis added); *Van’s Mat’l Co., Inc. v. Department of Revenue*, 131 Ill. 2d 196, 209-210 (1989) (“Even if the regulations were not determined to be unduly restrictive, we are not bound by the Department’s interpretations of the statute.”)

48. It is unclear why the Department would permit the transfer of contemporaneous trade credits but not advance trade credits. Whatever rationale might underlie this distinction, that perceived harm is most certainly not present in this case where the alleged "transfer" is merely because of Toyota Motor Credit Corporation's decision to title the vehicle in the name of a wholly owned entity where Toyota Motor Credit Corporation otherwise continues to direct the purchases of the vehicles and administer the leases. Thus, there is no reason for the Tribunal to apply the regulation in this case.

**THEREFORE**, Village Motors requests that, if the Tribunal finds that the Department's regulation is valid and prohibits Village Motors from applying the trade credits in computing the

tax that is due on the vehicles that Toyota Motor Credit Corporation purchased, that the Tribunal nevertheless decline to follow the Department's regulation and hold that Village Motors is entitled to apply the advance trade credits when computing the Retailers' Occupation Tax due on the sales.

**COUNT V**  
**ABATEMENT OF LATE PENALTIES**

49. Petitioner realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 21 inclusive.

50. Department imposed late penalties against Village Motors pursuant to 35 ILCS 735/3-3.

51. Late payment penalties may be abated where a taxpayer shows that its failure to pay the tax at the required time was due to reasonable cause. 35 ILCS 735/3-8. Reasonable cause is shown by a good faith effort to determine the proper tax liability.

52. As discussed herein, Village Motors computed the tax, filed tax returns and paid the tax on these transactions. Village Motors had a good faith belief that it was entitled to apply the advance trade credits when computing the tax.

**THEREFORE**, Village Motors requests that, if the Tribunal sustains the Department's proposed tax assessment, that it nevertheless find that it acted with good faith in determining its tax liability and that it therefore abate all the late payment penalties imposed under 35 ILCS 735/3-3.

Respectfully submitted,

**VILLAGE MOTORS LLC**



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