

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

LEON'S AUTO SALES INC., d/b/a)	
THE AUTO WAREHOUSE)	
Petitioner,)	No. 16-TT-42
v.)	
ILLINOIS DEPARTMENT OF REVENUE,)	Judge Brian F. Barov
Respondent.)	

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer's Petition as follows:

INTRODUCTION

1. The Notice was issued by the Respondent on January 5, 2016 denying a refund in the amount of \$18,017.00 in tax for taxable period of January 2011 through December 2013 ("Taxable Period"). A copy of the Notice is attached to this Petition (Attachment A).

ANSWER: The Department admits the factual allegations contained within Paragraph 1.

2. The Petitioner is a corporation with its principal place of business in Chicago, Illinois.

ANSWER: The Department admits the factual allegations contained within Paragraph 2.

3. Petitioner is located at 3632 North Cicero Avenue, Chicago, Illinois 60641, and its telephone number is 773-427-1200. The Petitioner's Account number is 2755-2314.

ANSWER: The information contained within Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within Paragraph 3.

BACKGROUND AND RELEVANT FACTS

4. Petitioner filed forms ST 557 with the Respondent for the Taxable Period requesting a tax credit for multiple vehicles that were repossessed by Petitioner and upon which Illinois Retailers' Occupation Tax ("ROT") was paid to the Respondent.

ANSWER: The Department admits the factual allegations contained within Paragraph 4.

5. The Respondent's auditor prepared an Excel spreadsheet of the claims that were denied which amounted to \$18,680.84 on Tab 1 of the Excel spreadsheet; \$56,967.70 on Tab 2; and \$17,386.51 on Tab 3 (see Attachment B).

ANSWER: The Department has insufficient information to either admit or deny the factual allegations contained within Paragraph 5.

6. For some reason, the Notice only refers to a denial of \$18,017.00 of these credits claimed by Petitioner and listed in Attachment B. However, all claimed amounts were apparently denied according to the auditor (Attachment B).

ANSWER: The Department states that the Notice of Tentative Audit Denial of Claim, attached as Attachment A to the Petition, speaks for itself. Also, Attachment B speaks for itself. Further, the ST 556Xs and 557s filed only claimed \$18,017.00. The other claims were never officially denied because they were not officially included with the audit at issue. The Taxpayer would need to file these claims, which would thereafter have to be denied in order for those claims to be protested.

APPLICABLE LAW

7. Under the Illinois ROT, a taxpayer is required to file a transaction tax return and pay the ROT upfront to the Respondent on transactions involving the sales of motor vehicles. 35 ILCS 120/3.

ANSWER: The Department objects to the term "upfront" as vague and ambiguous. To the extent the Department can answer, Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states that the cited statute speaks for itself.

8. On an installment sale of a vehicle, if the vehicle is later returned or repossessed, the taxpayer is entitled to a credit for the ROT paid on the portion of the sales price not collected from the purchaser. 86 Ill. Admin. Code § 130.1960(d).

ANSWER: Paragraph 8 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states that the cited regulation speaks for itself.

9. However, a taxpayer is not entitled to a credit if the installment contract is sold to a third party financing company "without recourse" to the taxpayer. 86 Ill. Admin. Code § 130.1960(d).

ANSWER: Paragraph 9 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states that the cited regulation speaks for itself. Further answering, to the extent an additional answer is required, admitted.

ERROR AT ISSUE

10. Petitioner sold a number of vehicles on installment contracts to individuals and paid ROT on the full sales price of the vehicles.

ANSWER: The Department has insufficient information to either admit or deny the factual allegations contained within Paragraph 10.

11. The purchasers of the vehicles for the transactions at issue in this case, as listed in Attachment B, defaulted on their payments, and the vehicles were repossessed by the Petitioner ("transactions at issue").

ANSWER: The Department states that Attachment B is attached to the Petition. The Department is without sufficient information to either admit or deny the other factual allegations contained within Paragraph 11.

12. Petitioner did not sell the installment contract on these transactions at issue to a third party finance company, but self-financed the sales to the purchaser.

ANSWER: Denied. As indicated in the audit file, including the audit narrative, the financing was done through a separate company with its own FEIN number called “Easy Acceptance.” To the extent any further answer is needed for the factual allegations contained within Paragraph 12, denied.

13. In filling out the ST 557 credit forms to receive a tax credit properly due for the transactions at issue, the Petitioner checked the line that said "no" to whether the installment contracts were sold "with recourse," since the installment contracts were not sold by Petitioner.

ANSWER: Based on the information contained within the Department’s audit file, the Department denies that the installment contracts were not sold. Further, the Department is without sufficient information to either admit or deny the other factual allegations contained within Paragraph 13.

14. The Respondent's auditor incorrectly interpreted the "no" line checked on the ST 557s as meaning the installment contracts were sold "without recourse" and denied the credits.

ANSWER: The Department objects to the term “[t]he Respondent’s auditor incorrectly interpreted” and its improper characterization and therefore denies the factual allegations contained within Paragraph 14 on that basis. Further, as indicated in the audit file, including the audit narrative, the finance agreements are without recourse. Checking “no” on an ST 557 indicates that a contract is sold with recourse. To the extent any further answer is needed for the factual allegations contained within Paragraph 14, denied.

15. The auditor ignored Petitioner's explanation of the checked line and the documents presented by Petitioner that demonstrated that no sale of the installment contracts occurred.

ANSWER: As indicated in the audit file, including the audit narrative, the Department denies the factual allegations contained within Paragraph 15. Further answering, the auditor determined, based on information provided by the Taxpayer and a review of the records that the checked line had been marked correctly.

16. Because Petitioner repossessed the vehicles at issue and did not sell its installment contracts without recourse to anyone, it is entitled to the ROT credit under Illinois law.

ANSWER: Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further answering, to the extent an additional answer is required it is affirmatively denied.

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**AFFIDAVIT OF TIFFANY STREEVAL
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

STATE OF ILLINOIS

COUNTY OF SANGAMON

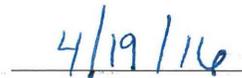
Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Tiffany Streeval, being first duly sworn on oath, depose and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor.
3. I reviewed and analyzed the audit information regarding the taxes asserted in the Notice of Tentative Audit Denial of Claim, which is the subject of Taxpayer's Petition.
4. I lack the personal knowledge required to either admit or deny the allegations contained in Paragraphs 5, 10, 11, 13, and 18 of Taxpayer's Petition.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.



Tiffany Streeval
Revenue Auditor



Date