

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

**MAGNIFICENT MOTORCARS, INC.,**

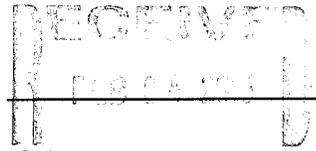
**Petitioner,**

**vs.**

**ILLINOIS DEPARTMENT OF REVENUE,**

**Respondent.**

No.



**PETITION**

Petitioner MAGNIFICENT MOTORCARS, INC. petitions this Tribunal for review of Notices of Tax Liability issued by Respondent ILLINOIS DEPARTMENT OF REVENUE (“Department”).

**STATEMENT OF JURISDICTION**

1. Magnificent Motorcars, Inc. 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 2 Notices of Tax Liability issued by the Department on September 25, 2014, each asserting a Retailers' Occupation Tax Act liability in excess of \$15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45.

3. The Department’s Notices of Tax Liability are for Retailers’ Occupation Tax liability of \$32,650 for the period January 1, 2009 to June 30, 2009 and \$94,586 for the period of July 1, 2009 to June 30, 2011 and proposed penalties and interest of \$10,280.57 and \$13,060, respectively for the period January 1, 2009 to June 30, 2009 and \$11,069.42 and \$18,917 respectively for the period July 1, 2009 to June 30, 2011 (the “2009-2011 NTLs”). A copy of the

2009-2011 NTLs are attached as Exhibit A. Petitioner never received copies of the 2009-2011 NTLs and first learned of them in December of 2015 as a result of receiving Final Notices of Tax issued by the Department.

4. Pursuant to Illinois regulation section 200.175, Petitioner requested that the Department's Office of Administrative Hearing's Chief Administrative Law Judge grant discretionary review of the 2009-2011 NTLs, despite Petitioner's failure to timely protest. A copy of Petitioner's request to the Chief Administrative Law Judge is attached as Exhibit B.

5. By letter dated January 9, 2015, the Chief Administrative Law Judge granted Petitioner's request for a discretionary review of the 2009-2011 NTLs. A copy of the January 9, 2015 letter is attached as Exhibit C.

#### **THE PARTIES**

6. Petitioner is Magnificent Motorcars, Inc., 225 N. Randall Road, St. Charles, Illinois 60174. Its phone number is (630) 485-2300.

7. Petitioner's attorneys are Fred Marcus, Horwood, Marcus & Berk Chtd., 500 West Madison St., Ste 3700, Chicago, Illinois 60661, (312) 606-3210 and Peter O. Larsen, Akerman LLP, 50 North Laura St., Ste. 3100, Jacksonville, Florida 32202.

8. Petitioner's Illinois tax identification number is 5505-0158.

#### **FACTS**

9. Magnificent Motorcars, Inc. was engaged in the business of selling and leasing motor vehicles at retail in Illinois.

10. In order to provide financing to its customers and facilitate sales, Magnificent Motorcars, Inc. entered into an agreement with Mercedes-Benz Financial Services USA LLC.

11. Pursuant to the agreement, Mercedes-Benz Financial Services USA LLC purchased motor vehicles from Magnificent Motorcars, Inc. for the purpose of leasing those motor vehicles to Magnificent Motorcars, Inc.'s customers.

12. Pursuant to the agreement, Mercedes-Benz Financial Services USA LLC directed that some of the motor vehicles that it purchased have the name of a different but related legal entity appear on the title to the vehicles.

13. Mercedes-Benz Financial Services USA LLC directed that name on the title of some of the vehicles be listed as DCFS Trust or Daimler Trust.

14. For each vehicle lease, Magnificent Motorcars, Inc. entered into the lease as lessor with its customers as lessee.

15. Acquisition fees were charged to the lessee pursuant to the lease agreement.

16. After the execution of each lease, Magnificent Motorcars, Inc. sold the vehicle to Mercedes-Benz Financial Services USA LLC. and assigned the lease to Daimler Trust.

17. For the tax periods in issue, under Illinois law, Retailers' Occupation Tax was imposed on the sale of the vehicle from Magnificent Motorcars, Inc. to Mercedes-Benz Financial Services USA LLC rather than on the lease payments from the lessee to the lessor.

18. Accordingly, after the sale of each vehicle to Mercedes-Benz Financial Services USA LLC, Magnificent Motorcars, Inc. timely submitted a sales tax transaction return ("ST-556") to the Department and paid the tax that was due.

19. In computing the sales price upon which Retailers' Occupation Tax was due, Magnificent Motorcars, Inc. applied certain advance trade credits that Mercedes-Benz Financial Services USA LLC possessed as a result of vehicles that it had previously traded in to Magnificent Motorcars, Inc. These advance trade in credits are specifically authorized by

Illinois law, and they reduce the sale price upon which the retailers' occupation tax or use tax is computed for each of the vehicle sales.

20. 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).

21. 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).

22. 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).

23. 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).

24. Mercedes-Benz Financial Services USA LLC traded in various vehicles and entered into the required contracts with Magnificent Motorcars, Inc. to obtain advance trade in credits, which Magnificent Motorcars, Inc. used when purchasing the vehicles that are the subject of the Department's Notices of Tax Liability.

25. The Department audited Magnificent Motorcars, Inc. for the period of January 1, 2009 to June 30, 2011. On September 25, 2014, the Department issued Notices of Tax Liability asserting Retailers' Occupation Tax Act liability of \$32,650 and \$94,586.

26. The Department's proposed tax liability stems from its disallowance of Magnificent Motorcars, Inc.'s application of these advance trade credits to reduce the sale price, and therefore the retailers' occupation tax that was due, on various purchases made by Mercedes-Benz Financial Services USA LLC.

27. The Department's proposed tax liability also stems from the assessment of lease acquisition fees charged to the lessee as part of the lease of the vehicle and are not part of the selling price of the motor vehicle subject to tax for the sale of the vehicle from Magnificent Motorcars, Inc. to Mercedes-Benz Financial Services USA LLC.

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

28. The Department disallowed Magnificent Motorcar, Inc.'s application of the advance trade credits on Mercedes-Benz Financial Services USA LLC's purchases due to the way in which Mercedes-Benz Financial Services USA LLC titled the vehicles that it purchased. The Department's disallowance of these advance trade credits is legally erroneous and cannot be sustained.

29. The name listed on the titles of all of the traded in vehicles at issue in this case was DCFS Trust, an entity related to Mercedes-Benz Financial Services USA LLC.

30. Daimler Trust is a statutory trust whose interests are owned by Mercedes-Benz Financial USA LLC and it is a disregarded entity for both federal and Illinois income tax purposes.

31. Mercedes-Benz Financial Services USA LLC was the owner of the traded in vehicles that were used as the basis of the advance trade credits as well as the owner of the replacement vehicles at issue in this case and had the incidents, benefits and burdens of ownership of all of the vehicles.

32. 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”).

33. 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.”)

34. 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.”)

35. 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.*

36. 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.

37. 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.

38. Therefore, the Department's proposed tax liability is legally erroneous because it is based on an examination of how the vehicles were titled rather than how they were owned and because the facts surrounding the purchases show that Mercedes-Benz Financial Services USA LLC owned the vehicles that were purchased using the advance trade credits.

39. Furthermore, the Department's proposed tax liability assessed on acquisition fees is legally erroneous because it is based on receipts of the lease charged to the lessee and not on the selling price for the sale of the vehicle as required by the law.

**THEREFORE**, Magnificent Motorcars, Inc. requests that the Tribunal:

a) Find that the Department's proposed tax assessment is legally erroneous and that Magnificent Motorcars, Inc. correctly applied the advance trade credits when computing the Retailers' Occupation Tax that was due on the vehicles that Mercedes-Benz USA LLC purchased;

b) Find that the Department's proposed tax assessment is legally erroneous and that Magnificent Motorcars, Inc. correctly excluded the lease acquisition fee, that is a receipt of the lease, from the selling price subject to tax when computing the Retailers' Occupation Tax that was due on the vehicles that Mercedes-Benz USA LLC purchased; 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**

40. Even if the Tribunal were to find that Mercedes-Benz Financial Services USA LLC did not own the vehicles that were purchased using the advance trade in credits or that the Department's regulation otherwise prohibits Magnificent Motorcars, Inc. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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**, Magnificent Motorcars, Inc. requests that the Tribunal:

a) Find that the use of the advance trade credits as described above was not a prohibited transfer of the advance trade-in credits under the Department's regulation, but if not, that that portion of the regulation is invalid and that Magnificent Motorcars, Inc. 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)**

46. 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.

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

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

48. Even if the Tribunal finds that the Department's regulation is valid and prohibits Magnificent Motorcars, Inc. from applying the advance trade credits to the vehicles that Mercedes-Benz Financial Services USA LLC purchased, it should nevertheless decline to follow the regulation and find that Magnificent Motorcars, Inc. is entitled to apply the advance trade credits.

49. 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.”)

50. 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 between Mercedes-Benz Financial Services USA LLC's decision to title the vehicle in the name of a different entity that is a disregarded entity for tax purposes and where Mercedes-Benz Financial Services USA LLC maintained the incidents, benefits and burdens of ownership of both the trade-in vehicles and the replacement vehicles. Thus, there is no reason for the Tribunal to apply the regulation in this case.

**THEREFORE**, Magnificent Motorcars, Inc. requests that, if the Tribunal finds that the Department's regulation is valid and prohibits Magnificent Motorcars, Inc. from applying the trade credits in computing the tax that is due on the vehicles that Mercedes-Benz Financial Services USA LLC purchased, that the Tribunal nevertheless decline to follow the Department's regulation and hold that Magnificent Motorcars, Inc. is entitled to apply the advance trade credits when computing the Retailers' Occupation Tax due on the sales.

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

51. Department imposed late penalties against Magnificent Motorcars, Inc. pursuant to 35 ILCS 735/3-3.

52. 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.

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

**THEREFORE**, Magnificent Motorcars, Inc. 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,

**MAGNIFICENT MOTORCARS, INC.**



Fred O. Marcus

Fred O. Marcus  
Horwood Marcus & Berk Chartered  
500 West Madison St., Ste 3700  
Chicago, Illinois 60661  
(312) 606-3200

Peter O. Larsen  
Akerman LLP  
50 North Laura St., Ste. 3100  
Jacksonville, Florida 32202  
(904) 598-8602

# **EXHIBIT A**

**Notice of Tax Liability**  
**for Form EDA-556, Sales Tax Transaction Audit Report**



September 25, 2014



Letter ID: CNXXX6X8248X8X1

Account ID: 5505-0158

#BWNKMGV  
#CNXX XX6X 8248 X8X1#  
MAGNIFICENT MOTORCARS INC  
ATTN: MICHAEL GAMBOA/CROWE HORWATH  
ONE MID AMERICA PLZ  
OAK BROOK IL 60522

We have audited your account for the reporting period **01-Jan-2009 through 30-Jun-2009**. As a result, we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	32,650.00	0.00	32,650.00
Late Payment Penalty Increase	13,060.00	0.00	13,060.00
Interest	10,280.57	0.00	10,280.57
<b>Assessment Total</b>	<b>55,990.57</b>	<b>\$0.00</b>	<b>\$55,990.57</b>

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

- If the amount of this tax liability, exclusive of penalty and interest is more than \$15,000 or if no tax liability is assessed but the total penalties and interest 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, which is **November 24, 2014**. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). Mail Form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability 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.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://tax.illinois.gov)), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS  
TECHNICAL REVIEW SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
217 785-6579

# Notice of Tax Liability

for Form EDA-556, Sales Tax Transaction Audit Report



#BWNKMGV  
#CNXX XX96 X398 3X45#  
MAGNIFICENT MOTORCARS INC  
ATTN: MICHAEL GAMBOA/CROWE HORWATH  
ONE MID AMERICA PLZ  
OAK BROOK IL 60522

September 25, 2014



Letter ID: CNXXXX96X3983X45

Account ID: 5505-0158

We have audited your account for the reporting period **01-Jul-2009 through 30-Jun-2011**. As a result, we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	94,586.00	0.00	94,586.00
Late Payment Penalty Increase	18,917.00	0.00	18,917.00
Interest	11,069.42	0.00	11,069.42
<b>Assessment Total</b>	<b>\$124,572.42</b>	<b>\$0.00</b>	<b>\$124,572.42</b>

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

- If the amount of this tax liability, exclusive of penalty and interest is more than \$15,000 or if no tax liability is assessed but the total penalties and interest 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, which is **November 24, 2014**. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). Mail Form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability 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.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/ 2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://tax.illinois.gov)), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS  
TECHNICAL REVIEW SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
217 785-6579

# **EXHIBIT B**



Crowe Horwath LLP  
Independent Member Crowe Horwath International  
One Mid America Plaza, Ste. 700  
Oak Brook, Illinois  
Tel 630.574.7878  
Fax 630.574.1608  
www.crowehorwath.com

December 19, 2014

Mr. Terry Charleton  
Chief Administrative Law Judge  
Illinois Department of Revenue  
101 West Jefferson Street- Level 5 SW  
Springfield, IL 62702

RE: Magnificent Motorcars Inc. IBT# 5505-0158- Request for Discretionary Late Hearing

Dear Mr. Charlton:

I am writing on behalf of my client, Magnificent Motorcars, Inc. ("the Taxpayer"), to request that you grant a discretionary late hearing pursuant to 35 ILCS 120/4. The Taxpayer was audited for the period of January 2009 through June 2011. The audit was the subject of an Informal Conference Board Hearing. The remaining issue open on appeal relates to advance trade credits involving DCFS Trust and Daimler Trust for which the Taxpayer has all necessary documentation and is prepared to proceed upon at hearing. The Taxpayer's issues are similar to those recently decided in favor of the taxpayer in *van Drunen Ford v. Hamer* in the Circuit Court of Sangamon County, Illinois, which we understand is currently on appeal.

We are requesting the discretionary late hearing due to miscommunication between myself, the client, and the client's outside counsel. I received copies of the Notices of Tax Liability dated September 25, 2014 (attached) and mistakenly believed that copies had been sent directly to the taxpayer and that copies had also been transmitted by my office to the taxpayer. The failure to timely file request for Tax Tribunal Review was not the fault of the Taxpayer.

We respectfully request that the Taxpayer be granted discretionary leave to file a late hearing request and be 60 days from the date of such approval to file the necessary documents.

Please let me know if you have any questions or need additional information.

Sincerely,

  
Michael Gamboa

Attachments- NTLs

# **EXHIBIT C**



**Illinois Department of Revenue**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
Willard Ice Building  
101 West Jefferson Street – Level 5SW  
Springfield, IL 62702  
(217)782-6995

January 9, 2015

Michael Gamboa  
Crowe Horwarth LLP  
One Mid America Plaza, Ste 700  
Oak Brook, IL 60522

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**  
Magnificent Motorcars, Inc.  
Account ID: 5505-0158  
2 Notices of Tax Liability (NTLs), dated September 25, 2014  
Letter ID: CNXXXX6X8248X8X1  
Letter ID: CNXXXX96X3983X45

Dear Mr. Gamboa:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing regarding the above NTLs. Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary hearing for the above NTLs.

The amount of liabilities at issue for this protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest) or (\$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.** See Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's rules. Please note that the Tax

Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,



Terry D. Charlton  
Chief Administrative Law Judge  
Illinois Department of Revenue

TDC

**CERTIFICATE OF SERVICE**

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered by messenger before the hour of 5:00 p.m. on the 4th day of February, 2015.

Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601

A handwritten signature in black ink, consisting of a stylized, cursive 'S' shape, positioned above a horizontal line.

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>MAGNIFICENT MOTORCARS, INC.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>No.</b> _____
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Respondent.</b>	)	

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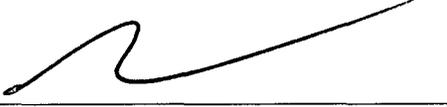
**NOTICE OF FILING**

To: Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601

PLEASE TAKE NOTICE that on the 4th day of February, 2015, we filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, IL 60601 **Magnificent Motorcars, Inc.'s Petition**, a copy of which accompanies this notice and is served on you herewith.

Respectfully submitted,

**MAGNIFICENT MOTORCARS, INC.**



Fred O. Marcus

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