ILLINOIS INDEPENDENT

TAX TRIBUNAL

MARTIN EQUIPMENT OF ILLINOIS, INC., an Illinois corporation, Petitioner, v. ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)))))))))	18 TT 86 Judge Brian F. Barov

ORDER ON SUMMARY JUDGMENT

The Petitioner, Martin Equipment of Illinois, Inc. ("Martin"), sells equipment manufactured by John Deere & Co. ("Deere"). The Department conducted a sales tax audit of Martin for the period from July 1, 2012 through December 31, 2014, and decided that, among other things, certain sales credits provided by Deere to Martin should have been included in Martin's taxable gross receipts and thus subject to state sales tax. The Department issued a Notice of Tax Liability against Martin assessing it additional sales tax, interest and penalties. Martin and the Department resolved all of the disputed issues in the Notice except for the issue of the proper tax treatment of Deere's sales credits. *See* Pet. Reply Mem. at 3. Martin has challenged the Department's tax assessment on the Deere sales credits and the associated interest in the Tax Tribunal and has now moved for summary judgment. For the reasons stated below, summary judgment is granted in Martin's favor.

Background

During the tax period in issue, Martin purchased construction equipment from Deere that Martin either sold at retail or included in its inventory of leasable equipment. The invoice price that Deere charged Martin was known as the Moline Dealer Price. Aff. of Delene Bain at ¶ 7. But the Moline Dealer Price was not the final price that Martin paid Deere. Rather, once the equipment was either sold or placed in Martin's inventory of leasable equipment, the Moline Dealer Price was reduced by credits provided by Deere. *Id.* at ¶¶ 7-9; *see* Dep't Resp. to Mot. for Summ. J Exs. ("Dep't Exs."); Pet's Suppl. Evidence in Supp. of Mot. for Summ. J. ("Supp. Evidence").

There were two general types of credits involved in this case. The most common sales credit available to Martin–[redacted] Credit–applied to the original invoice price of any Deere construction equipment either sold by Martin to a retail customer or added to Martin's leasing fleet, during the relevant tax period. *Id.* at ¶¶ 8-9. The record reflects that that [redacted] Credits can be further subdivided into three categories. One type of credit applied to a narrow band of equipment and [redacted]. The second type of credit applied to broad categories of construction equipment and [redacted]. *See* Dep't Exs.; Suppl. Evidence.

The third kind of [redacted] Credit applied when a customer purchased multiple pieces of equipment and [redacted]. Supp. Evidence. At the audit level, however, the Department determined that this multiple equipment discount did not generate gross receipts. *See* Supp. Ex. at 2. As a result, these credits were not included in the assessment and they are not in issue in this case.

All of the [redacted] Credits reduced Martin's invoice price. *See* Dep't Exs; Supp. Evidence. Further, the credits had no margin requirements, i.e., Martin's retail price did not affect the credit it received from Deere. Dep't Ex.;

Supp. Evidence. Martin was not required to pass along the discount it received via the credit to its retail customers. Bane Aff. at 10; *see* Dep't Exs.; Suppl Evidence. In fact, Martin's retail customers were not informed of the credits and they were not part of Martin's negotiated selling price. *Id.* at ¶ 10(d).

In addition to the [redacted] Credit, Deere also made a [redacted] Credit available to Martin. The [redacted] Credit applied to sales to Deere's larger customers that had negotiated a price directly with Deere's corporate offices but were completed through retail dealerships such as Martin. Bane Aff. at ¶ 11. This credit, which also operated as a discount off of the Moline Dealer Price, was available to Martin when it [redacted]. *Id.* at ¶ 10(d); Dep't Exs.; Supp. Evidence.

Martin did not treat the Deere credits as part of its gross receipts for Illinois sales tax purposes. In the course of its sales tax audit, the Department determined that the amount of credits that Martin received (excepting the multiple unit sales discounts, as noted above) should have been included in Martin's gross receipts. The Department issued the Notice of Tax Liability assessing Martin additional sales tax interest and penalties based on the amount of Deere sales credits that Martin received.

Analysis

The Petitioner has filed a motion for summary judgment on the ground that the amount of the discounts it realized from the Deere Credits should not have been included in its tax base under the Retailers Occupation Tax Act ("ROTA"), 35 ILCS 120/ 1 *et seq*. Summary judgment should be granted when "the pleadings, depositions and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c). "A motion for summary judgment must be strictly construed against the movant and liberally in favor of the opponent." *Lutz v. Goodlife Entm't, Inc.*, 208 Ill. App. 3d 565, 568 (1st Dist. 1990).

"[A]lthough the opponent of a summary judgment motion does not have to prove his case, he must present some facts that would arguably entitle him to judgment." *Id.*

A petitioning taxpayer must provide its business's books and records to overcome the presumption of correctness of the Department's Notice of Tax Liability. *See Stark Materials Co., Inc. v. Dep't of Revenue*, 349 Ill. App. 3d 316, 322 (4th Dist. 2004). However, taxing statutes are construed "most strongly against the government and in favor of the taxpayer." *Chet's Vending Serv., Inc. v. Dep't of Revenue*, 71 Ill. 2d 38, 42 (1978).

The ROTA is a tax on the gross receipts of a retailer selling tangible personal property. *Chet's Vending Serv., Inc.*, 71 Ill. 2d at 41-42. Gross receipts are defined as "'the total selling price or the amount of such sales.'" *Id.* at 41 (quoting 35 ILCS 120/1). Selling price means the "consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, [or] property." 35 ILCS 120/1. Section 130.401 of the Department's regulations provides that "Gross receipts" means "all the consideration actually received by the seller." 86 Ill. Admn. Code § 130.401. Consideration amounts to any exchange of promises or performances bargained for between seller and buyer. *See Marque Medicos Fullerton, LLC v. Zurich Am. Ins. Co.*, 2017 IL App (1st) 160756, ¶ 65.

Consideration received from a third party may become part of a seller's gross receipts. Discounts, credits or coupons provided to a seller can become part of its taxable gross receipts if tied to the individual retail sale as part of the selling price. *Chet's Vending Serv., Inc.*, 71 Ill. 2d at 42. But even when tied to individual sales, discounts coupons or credits that not do increase the amount the seller takes in, are not taxable gross receipts. *Saxon-Western Corp. v. Mahin*, 81 Ill. 2d 559, 564 (1980). Consequently, if a retailer allows its customer a discount from the selling price, the retailer's gross receipts subject to tax depends upon whether the retailer receives any reimbursement for the amount of the discount. 86 Ill. Admn. Code § 130.2125 (b)(2)(A).

Ogden Chrysler Plymouth, Inc. v. Bower, 348 Ill. App. 3d 344 (2d Dist. 2004), illustrates the principle's operation. In that case, a Chrysler dealership

participated in Chrysler's employee discount program. 348 Ill. App. 3d at 947. To participate in the program, the dealer was required to sell Chryslers to eligible purchasers at a reduced rate–the factory invoice price. *Id.* In exchange for every automobile sold under the employee discount program, Chrysler paid the dealer an additional 6% of the purchase price plus $75.00. *Id.* The *Ogden Chrysler Plymouth* court held that because the dealer was reimbursed "as a result of providing a reduced price to an eligible purchaser," its payments constituted taxable gross receipts. *Id.* at 955.

The key factors found in *Ogden Chrysler Plymouth*–cost reduction to the retail purchaser coupled with reimbursement to the retailer–are not present here. Martin was not required to pass on any savings to its customers to obtain the [redacted] Credit. The [redacted] Credit only lowered Martin's costs; it did not add to its total revenue. The [redacted] credits should not have been included in Martin's taxable gross receipts and should not have been assessed for sales tax. *See Saxon-Western Corp.*, 81 Ill. 2d at 564.

The [redacted] Credits are tied to the sales price of the equipment, as Martin recognizes. *See* Mem. of Law Supp. Mot. of Martin Equipment for Summ. J. at 19. The [redacted] Credits were available to Martin only when it completed a sale to certain qualifying customers–[redacted]–and the credit's receipt was "contingent" upon Martin's completing the sale at a price [redacted]. The [redacted] credit [redacted] functioned as a form of reimbursement to Martin for the lower selling price under the *Ogden Chrysler Plymouth* analysis.

Martin seeks a safe harbor for receipt of the corporate credits under section 130.2125(b)(2)(B) of the Department's regulations, 86 Ill. Admn. Code § 130.2125(b)(2)(B), which provides, in relevant part:

> [I]f the retailer receives a discount from a manufacturer, distributor or other source when purchasing tangible personal property for resale, and, pursuant to a contract with that manufacturer, distributor or

> other source, the retailer issues discount coupons applicable to the sale of property, the coupons shall not be deemed to be reimbursed by the manufacturer, distributor or other source.

Id.

This provision applies to the [redacted] Credit. Martin received a discount from Deere (in the form of a sales credit), which, under Martin's contract with Deere, required Martin to sell to its retail customer [redacted]. Thus, under section 130.2125(b)(2)(B), the [redacted] Credits did not qualify as taxable gross receipts under the ROTA. Martin should not have been assessed sales tax on these credits either.

Conclusion

The Petitioner's motion of summary judgment is GRANTED. Summary judgment is entered in favor of the Petitioner and against the Department. The Notice of Tax Liability assessing sales tax on Petitioner's receipt of the Deere sales credits, along with accompanying interest, is reversed and vacated. This is a final order subject to appeal under section 3-113 of the Administrative Review Law, and service by email is service under section 3-113(a). *See* 35 ILCS 1010/1-90; 86 Ill. Admn. Code § 5000.330. The Tribunal is a necessary party to this appeal.

s/ *Brian Barov*
BRIAN F. BAROV
Administrative Law Judge

Date: August 23, 2019