

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

MARTIN EQUIPMENT OF ILLINOIS, INC.,)	
an Illinois Corporation,)	
)	
Petitioner,)	
v.)	No. 18 TT 86
)	Judge Brian Barov
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
)	
)	
Respondent.)	

**Department of Revenue’s Response to Petitioner’s
Motion for Summary Judgment**

Introduction

On June 11, 2019, Petitioner, Martin Equipment of Illinois, Inc., (“Martin Equipment”) filed its Motion for Summary Judgment (“MSJ”) in this matter. Respondent Illinois Department of Revenue (the “Department”) submits this brief in response and opposition to Martin Equipment’s MSJ.

Background

In March of 2015, the Department began an audit of Martin Equipment, an authorized dealer of John Deere construction, mining and earthmoving equipment with stores in several downstate Illinois locations. After reviewing Martin Equipment’s records, the auditor proposed a number of adjustments to Martin Equipment’s sales tax returns. Some of the proposed adjustments were agreed to by Martin Equipment, but the proposed adjustments relating to

certain incentive credits (the “John Deere Credits”) received from John Deere were disputed. Specifically, the auditor proposed that the John Deere credits should have been included on their sales tax returns as part of gross receipts. Since Martin Equipment disagreed with those adjustments, the Department ultimately issued its statutory Notice of Tax Liability (“NTL”) as authorized by Section 4 of the Retailers’ Occupation Tax Act (the “ROTA”). 35 ILCS 120/4. Martin Equipment timely protested the NTL, resulting in the instant action.

I. Martin Failed to Rebut the Department’s Prima Facie Case Established by the NTL

Before addressing Martin Equipment’s substantive claim in its MSJ, the legal effect of the Department’s NTL must be noted because that principle establishes a taxpayer’s burden in the face of such notice. A very long line of cases law interpreting the *prima facie* language in the ROTA as well as the Illinois Income Tax Act has held that the introduction of the Department’s statutory notice shifts the burden to the taxpayer. *See Balla v. Department of Revenue*, 96 Ill.App.3d 293, 295, 421 N.E.2d 236 (1st Dist. 1981)(“The Illinois legislature, in order to aid the Department in meeting its burden of proof in this respect, has provided that the findings of the Department concerning the correct amount of tax are *prima facie* correct.”); *PPG v. Department of Revenue*, 328 Ill.App.3d 16, 33-4, 765 N.E.2d 34 (1st Dist. 2002)(“However, PPG only offered the testimony of Getty and Zamboldi instead of tendering any of the documents requested”); *Jefferson Ice Co. v. Johnson*, 139 Ill.App.3d 626,632, 487 N.E.2d 1126 (1985); *A.R. Barnes and Company v. Department of Revenue*, 173 Ill.App.3d 826, 832, 527 N.E.2d 1048 (1st Dist. 1988)(“Once the DOR establishes its *prima facie* case, the burden shifts to the plaintiff to overcome it by producing competent evidence, identified with its books and records showing that the DOR’s returns are incorrect”); *Mel-Park Drugs, Inc. v. Department of Revenue*, 218 Ill.App.3d 203, 219, 577 N.E.2d 1278 (1st Dist. 1991)(taxpayer’s production of self-prepared

adding machine tapes was not sufficient to overcome the Department's *prima facie* case); *Masini v. Department of Revenue*, 60 Ill.App.3d 11, 12, 376 N.E.2d 324 (1st Dist. 1978)(merely denying the accuracy of the Department's assessments without tendering any documents in support of the challenge will not overcome the Department's *prima facie* case); *Copilevitz v. Department of Revenue*, 41 Ill.2d 154, 157-58, 242 N.E.2d 205 (1968)(the taxpayer must produce some evidence identified with its books and records in order to overcome the Department's *prima facie* case). See *Quincy Trading Post, Inc. v. Department of Revenue*, 12 Ill.App.3d 725, 730-31, 298 N.E.2d 789, 793 (4th Dist. 1973)("In short, the plaintiff may not prevail by merely saying its own return was correct, and that the revenue department must prove its return correct. Simply questioning the Department of Revenue's return or denying its accuracy does not shift the burden to the Department of Revenue."); *PPG Industries, Inc.* 328 Ill.App.3d at 34 ("Further, the law establishes that 'to overcome the Department's *prima facie* case, a taxpayer must present more than its testimony denying the accuracy of the assessments, but must present sufficient documentary support for its assertions.'")(quoting *Mel-Park Drugs, Inc.*, 218 Ill.App.3d at 217).

Rebutting the Department's *prima facie* case is a threshold matter. *Stark Materials, Inc., v. Department of Revenue*, 349 Ill.App.3d 316, 325. Before deciding on Martin Equipment's MSJ, this Tribunal must first determine whether Martin Equipment has rebutted the Department's *prima facie* case. If a taxpayer fails to overcome the Department's *prima facie* case, the case is over, taxpayer loses. *Id.* No discussion of whether a material issue of fact is necessary, the Department has already prevailed at that point. *Id.*

Although Martin Equipment did attach an affidavit to its MSJ, an affidavit, being the legal and functional equivalent of testimony, cannot, by itself, overcome the Department's *prima facie* case. See *Robidoux v. Oliphant*, 201 Ill.2d 324, 335, 775 N.E.2d 987 (2002)("An affidavit

submitted in the summary judgment context serves as a substitute for testimony at trial.”); *Quincy Trading Post, supra*. 12 Ill.App.3d at 730-31 (Taxpayer cannot simply deny the accuracy of Department’s notice; rather, it must submit its own books and records to rebut the prima facie case). In the absence of any of its own books and records, Martin Equipment’s MSJ and accompanying affidavit, which is merely a substitute for oral testimony, did not rebut the Department’s prima facie case established by its NTL. *Id.*

Standard for Summary Judgment

Summary judgment is a drastic measure for disposing of a case and should only be granted where the moving party’s right is free from doubt. *Lutz v. Goodlife Entertainment, Inc.* 208 Ill.App.3d 565, 568, 567 N.E.2d 477 (1st Dist 1990). It should be awarded with caution so as not to preempt a litigant’s right to trial or its right to fully present the factual basis for its case where a material dispute exists. *Colzzi v. North Palos Elementary School Dist. No. 117*, 232 Ill.App.3d 379, 382, 597 N.E.2d 683 (1st Dist. 1992). The party opposing summary judgment need not disprove facts alleged by the moving party but only needs to establish factual evidence showing another version of relevant events, thus creating a genuine issue as to which of the competing versions is true. *West v. Adelman*, 260 Ill.App.3d 455, 458-59, 630 N.E.2d 846 (1st Dist. 1993).

II. Even if the NTL’s Prima Facie Case is Rebutted, Summary Judgment is Still Inappropriate Due to Presence of Material Issue of Fact

However, even if Martin Equipment’s MSJ and accompanying affidavit were determined to have rebutted the Department’s *prima facie* case, summary judgment would still be inappropriate given that a material factual issue still exists, namely, the degree to which the various John Deere Credits are tied to or directly connected to each individual sale. The ultimate legal issue in this matter is whether the various John Deere Credits are includible as gross receipts under the ROTA definition of “selling price” in Section 1. 35 ILCS 120/1. In *Ogden*

Chrysler Plymouth, Inc., v. Bower, 348 Ill.App.3d 944 (2nd Dist. 2004), the Appellate Court determined that the degree of connection between the manufacturer's payment to the auto dealer and the original sale to the customer was critical. *Id* at 953. So the extent to which the Deere credits were controlled by or dependent on Martin Equipment's sales of equipment, including the price of a specific item of equipment, is obviously a material issue of fact.

In Martin's response to the Department's Interrogatory No. 6, Martin stated that with certain specified exceptions, the [REDACTED] Included in the documents provided to the Department in response to the Department's discovery request are various [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is clearly contrary to their response to Interrogatory 6.

Since the connection between the sale to the dealer's customer and the payment/credit/reimbursement/incentive to the dealer is critical, any disparity between original source John Deere documents and Martin's discovery responses is a very material issue of fact. In order to decide this matter, the Tribunal will need to know how the John Deere Credits were computed and the extent to which they were connected to individual sales.


Because the critical, potentially dispositive question of how the John Deere credits are connected to Martin Equipment's individual sales is still open in view of the conflict between the [REDACTED] and Martin Equipment's discovery responses, summary judgment is

premature. That question must be resolved before the Tribunal can decide this matter.

Consequently, Martin Equipment's MSJ should be denied.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

Undersigned counsel for the Department, being fully sworn upon oath, deposes and states that a copy of the foregoing Department's Brief in Response to Martin Equipment's Motion for Summary Judgement was served upon the individual(s) named below this 24th day of July, 2019 by email attachment to the individual(s) listed below:

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EXHIBIT A
FILED UNDER SEAL