

ILLINOIS INDEPENDENT TAX TRIBUNAL

<p>Martin Equipment of Illinois, Inc., an Illinois Corporation,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>Illinois Department of Revenue,</p> <p style="text-align: center;">Respondent.</p>	<p>No. 18-TT-86</p> <p>Judge Brian Barov</p>
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MOTION OF MARTIN
EQUIPMENT FOR
SUMMARY
JUDGMENT

The Petitioner, Martin Equipment of Illinois, Inc. (“Martin”), by and through its attorneys, Sutkowski Law Office Ltd., hereby moves for the Court to enter summary judgment in its favor and against the Illinois Department of Revenue (“Department”) and, in support, states as follows:

1. No genuine issue of material fact exists, in that the record unambiguously demonstrates that:

a. At all relevant times, Martin reported and paid Retailer’s Occupation Tax (“Sales Tax”) in an amount properly calculated based on the actual proceeds from its non-exempt retail customers. (See Affidavit of Delene Bane, ¶5)

b. Martin is an authorized reseller for construction equipment

manufactured by John Deere & Co. (“Deere”), which sells its equipment to Martin at a dealer’s price known as the Moline Dealer Price (“MDP”). (Bane Aff. ¶7).

c. Deere does not manufacture automobiles, and Martin is not an automobile dealer. (Bane Aff. 17).

d. The Department’s Notice of Deficiency pertains exclusively to the Department’s opinion that certain credits (the “Deere Credits”) provided to Martin by Deere should be considered a portion of the “selling price,” as that term is defined by Section 1 of the Retailer’s Occupation Tax Act (“Act”) for Martin’s sales of Deere construction equipment. These credits fall into two broad categories, as follows.

e. The first category of Deere Credits (the “Normal Deere Credits”) have the following characteristics: (i) the Normal Deere Credits apply to substantially every item of Deere construction equipment manufactured by Deere and sold by Martin; (ii) the Normal Deere Credits have been in place continuously for over a decade; (iii) the Normal Deere Credits are applied by Deere to Martin upon the sale by Martin of a qualifying piece of Deere construction equipment to a customer, are not contingent on the identity of the customer but may vary depending on the volume or nature of the customer’s business; (iv) the Normal Deere Credits are not communicated to the customer, are not applied by the customer, and are not part of the consideration paid to Martin by the retail customer; and (v) because Deere does not manufacture automobiles, none of the Normal Deere Credits apply to the sale of automobiles. (Bane Aff. ¶¶ 8-10).

f. The second category of Deere Credits (the “Corporate Customer Credit”) has the following characteristics: (i) the Corporate Customer Credit applies to substantially every item of Deere construction equipment manufactured by Deere and sold by Martin; (ii) the Corporate Customer Credit has been in place continuously for over a decade; (iii) the Corporate Customer Credit is applied by Deere to Martin upon the sale by Martin of a qualifying piece of Deere construction equipment to a qualifying customer, that being a customer that purchases a sufficient volume of Deere equipment nationwide that the customer is entitled to a discount from Deere; (iv) the Corporate Customer Credit is contingent on Martin completing a retail sale of a qualifying piece of Deere construction equipment to the qualifying customer at the retail price no greater than a price determined by Deere; and (v) because Deere does not manufacture automobiles, the Corporate Customer Credit does not apply to the sale of automobiles. (Bane Aff. ¶¶8-9, 11).

2. Martin Equipment is entitled to judgment as a matter of law for the reasons stated in its Memorandum of Law submitted concurrently with this motion.

Wherefore Martin Equipment of Illinois, Inc. respectfully requests that this Court enter judgment in favor of it and against the Illinois Department of Revenue and order such further relief as the Court deems just and appropriate.

Respectfully submitted,

Martin Equipment of Illinois, Inc.

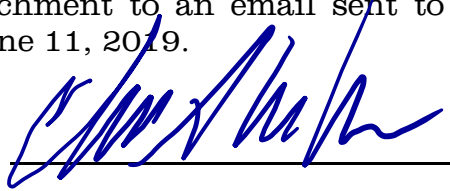
By: SUTKOWSKI LAW OFFICE LTD.

By: 

(One of its attorneys)

CERTIFICATE OF SERVICE

Under penalties as provided by Section 2-109 of the Code of Civil Procedure, the undersigned certifies that a copy of the forgoing document was served upon Michael Coveny, as counsel for the Illinois Department of Revenue, by transmitting the same as an attachment to an email sent to the address Michael.Coveny@Illinois.gov on June 11, 2019.



Charles A. LeFebvre, Esq., Of
Counsel
ARDC No. 6256266
Edward F. Sutkowski, Esq.
ARDC No. 2780372
SUTKOWSKI LAW OFFICE LTD
416 Main Street Suite 400
Peoria, Illinois 61602-3141

P: 309.680.8000 F: 309.680.8001
chuck@sutlawoffice.com
ed@sutlawoffice.com