ILLINOIS INDEPENDENT TAX TRIBUNAL

Martin Equipment of Illinois, Inc., an Illinois Corporation, Petitioner, v. Illinois Department of Revenue, Respondent.	No. 18-TT-86 Judge Brian Barov

<u>MEMORANDUM OF LAW SUPPORTING MOTION OF MARTIN EQUIPMENT FOR SUMMARY JUDGMENT</u>

The Petitioner, Martin Equipment of Illinois, Inc. ("Martin"), by and through its attorneys, Sutkowski Law Office Ltd., submits this Memorandum of Law in Support of its Motion for Summary Judgment, filed concurrently herewith, and states as follows:

<u>BACKGROUND</u>

John Deere & Co. ("Deere"), founded in 1837, is one of the world's largest manufacturers of heavy equipment, having over 70 billion dollars in assets and over 35 billion in annual revenue. Deere sells its equipment through a network of authorized dealers such as Martin. Due to the size differential, the terms of the dealership arrangement are dictated entirely by Deere, including the wholesale pricing, invoicing methods, and payment terms.

The background information that follows represents uncontested facts

supported by the affidavit of Delene M. Bank attached to the Motion for Summary Judgement or general background supported by the audit record.

The Normal Deere Credits

Martin is an authorized dealer of Deere's construction equipment, having operations in multiple Illinois locations. Deere sells equipment to Martin at a price that is defined as the Moline Dealer Price ("MDP") minus one or more credits (the "Normal Deere Credits") expressed as a percentage of MDP. Martin never pays MDP for new construction equipment it purchases from Deere; even if Martin purchases an item to lease to customers, it pays Deere a price calculated as MDP minus an applicable credit.[1] Likewise, when Martin purchases a new item of construction equipment from Deere and then sells the item to a retail customer, Martin pays a price calculated as MDP minus an applicable credit.

In the normal course of business, Martin receives an invoice from Deere reflecting the net price (MDP minus the applicable credits) for a new item it purchases. This single invoice reflecting all applicable credits is available because Martin and Deere know how the item will be placed in service at the time of the order. If, instead, Martin purchases an item to hold as stock, Martin must initially pay MDP for the item, and then receive any applicable credits once the item is placed in service, either through a retail sale or by being added to the DORF program.

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[1] **The credit in such an instance is part of a program referred to as DORF, which the Department did not examine as part of the audit, apparently because no retail sale, and therefore no tax, was implicated. (See Affidavit of Delene M. Bane attached to Martin's Motion for Summary Judgment, ¶8).**

Deere does not publish suggested retail pricing for its construction equipment, nor does it advertise sales or promote discounts to retail customers. Instead, the MDP and discounting program are considered trade secrets and closely protected.

The Corporate Customer Credit

Certain large purchasers of Deere construction equipment have the ability to negotiate their retail pricing directly with Deere's corporate headquarters. Even though the pricing is negotiated directly with Deere, the customers still purchase the construction equipment through authorized dealers. By agreement with Deere, the dealer must sell the equipment to the customer a price no greater than that established by Deere, and then Deere will provide the dealer with a credit (the "Corporate Customer Credit") sufficient to provide the dealer with an appropriate retail margin on the sale.

The Audit

All of the above had been in place for over a decade when the Illinois Department of Revenue ("Department") conducted its audit of Martin having an audit period beginning July 1, 2012, and ending December 31, 2014. The Department found that Martin had correctly reported the actual payment made by retail customers on all its sales of Deere construction equipment during the audit period. However, the Department nevertheless issued a Notice of Tax Liability ("Notice") because the Department did not agree that the actual price paid by Martin to Deere for its purchases of construction equipment—MDP minus applicable credits—was the cost of Martin's goods sold. Instead, the

Department recharacterized the transaction such that it insisted that MDP was the actual wholesale price, and then any credits against MDP (at least in the case of equipment sold to retail customers) were part of the "gross receipts" of those sales.[2] Accordingly, the Department calculated additional tax due to the extent of the applicable rate, applied to the total of the Normal Deere Credits and the Corporate Customer Credit during the audit period.

This lawsuit followed.

ARGUMENT

"'Taxing statutes are to be strictly construed and their language is not to be extended or enlarged by implication beyond its clear import, but in cases of doubt such laws are construed most strongly against the government and in favor of the taxpayer.'" *Chet's Vending Services, Inc. v. Department of Revenue*, 71 Ill. 2d 38, 42, 374 N.E.2d 468, 470 (1978), *quoting Ingersoll Milling Machine Co. v. Department of Revenue*, 405 Ill. 367, 373, 90 N.E.2d 747, 751.

The Deere Credits Are Not Part of the "Gross Receipts" or "Selling Price" of Martin's Retail Sales

Section 2 of the Retailer's Occupation Tax Act ("Act") (35 ILCS 120/2) imposes a tax on persons, such as Martin, engaged in the retail sale of personal property in the State of Illinois. The rate of the tax applies against "gross receipts from sales of tangible personal property …" 35 ILCS 120/2-10. The term

[2] **The Deere Credits are either reductions in the cost of goods sold or they are additions to the sale proceeds. Mathematically, they cannot be both.**

"gross receipts," in turn, is defined as "the total selling price or amount of such sales…." 35 ILCS 120/1.

> "'Selling price' or 'amount of sale' means the ***consideration for a sale*** valued in money whether received in money or otherwise, including cash, credits, property, …, and services …" 35 ILCS 120/1 (emphasis added).

The phrase "consideration for a sale" has no definition in the Act but is well understood:

> "Consideration [for a sale]: The inducement to a [sales] contract. The cause, motive, price, or impelling influence which induces a [seller) to enter into a [sales] contract. …." Black's Law Dictionary (6th Ed.), citing Restatement (Second) of Contracts §§17(1),71.

Here, the Department is apparently [3] advocating the idea that an undisclosed side benefit to a seller somehow constitutes part of the "consideration for a sale." That view lacks merit.

In *Chet's Vending Services*, the Department attempted a similar argument in a situation where the taxpayer, a food vendor, sold items at retail to employees of certain businesses where the taxpayer was allowed to operate. The taxpayer received payments from those customers but also received side revenue from the employers. The taxpayer paid tax under the Act based on the payments made

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[3] **The Department's response to this Motion for Summary Judgment will constitute the first instance in which it has attempted to articulate its reasoning to Martin.**

by its customers, but the Department asserted that the revenue from the employers should also be treated as part of the consideration for those sales. The Supreme Court rejected that argument:

> "Defendant contends that the … payment paid plaintiff by the employer is an inseparable part of the consideration for the sale and transfer of tangible personal property and is includable in plaintiff's gross receipts subject to the retailers' occupation tax. It argues that the subsidy-payment arrangement represents a 'two-party split' of the consideration for the transfer of tangible personal property between the employer and employee and that the payments received from both must be combined in computing the retailers' occupation tax.
>
> "The sales of food and beverages involved here effected a transfer of ownership or title to the employee-purchaser 'for use or consumption,' and the employee who bought the item was the 'purchaser.' Each sale was a separate transaction, and as defined in the statute ([citation]) the 'selling price' was 'the consideration … valued in money whether received in money or otherwise, including cash, credits, property other than tangible personal property and services … .' … To construe the terms 'selling price' and 'gross receipts' in the manner for which defendant contends would require us to hold that the manual or cafeteria-type sales at each industrial location during a calendar month were one sale to both the employer and the employees …" *Chet Vending Services*, 71 Ill. 2d

at 42, 374 N.E.2d at 862.

Here, similarly, the Department seems to believe that some sort of "two-party split" of the consideration for Martin's sales exists. The first problem is that the Department cannot simply declare that to be the case in the absence of some showing in the record that the Deere Credits played some role in supplementing the customer's purchase price for the goods. Other than the mere timing of when the credits became available to Martin, this record is devoid of any connection between the credits and the retail sale.[4]

For example, Martin could hypothetically purchase two identical items, each having an identical MDP. Item A is ordered by Martin after receiving a sales order from a retail customer, and so Martin would receive an invoice from Deere for an amount below MPD. At the same time, if Martin orders Item B to add to the DORF program, Martin would receive and pay an invoice from Deere for an amount below MDP. After some time, Martin could hypothetically sell Item B to the same customer who purchased Item A, for the same price.

In this scenario, even though two identical retail transactions occurred, the Department would apply two different taxes based on nothing more than internal accounting between Martin and Deere that was completely opaque to the retail customer and having no impact on either transaction. The result is indefensible, and the policy is being advocated flies in the face of common

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[4] **The Department undoubtedly believes – and would have the Court believe – that the Deere credits are contingent on the completion of a retail sale. The ability of Martin to receive a credit (albeit under a program having a different name) upon deciding to retain items as part of its own rental fleet contradicts this suggestion. It is clear that Deere expects its final price on virtually any item it sells to Martin to be a discounted price, not MDP.**

experience, the statutory language, or even, as shall be described next, the Department's own regulations.

The Odgen Chrysler Decision and the Department's Regulations Do Not Support Its Position

The Department has issued a regulation (86 Ill. Adm. Code 130.2125), that codifies its approach to determining when some payment or credit other than cash from a retail customer is considered part of the "gross receipts" taxed under the Act. This regulation, and the case law upon which it relies, provides no assistance to the Department's position in this case..

1. Martin Did Not Receive Any Discount Coupons

Paragraph (a) of that regulation, entitled "Application of the Tax" cites the Illinois Appellate Court's decision in *Ogden Chrysler Plymouth, Inc. v. Bower*, 348 Ill. App. 3d 944, 809 N.E.2d 792 (2d Dist. 2004), in which the court held that "gross receipts" was not limited to consideration received directly from the customer. In Ogden, discussed below, the court determined that an automobile manufacturer's subsidy of a dealership's employee's purchase, via a rebate, was taxable. Paragraph (a) of the regulation cites this decision, and then states:

> "Consequently, ***if a retailer allows a purchaser a discount*** from the selling price on the basis of a discount coupon, the retailer's gross receipts subject to tax depends upon whether the retailer receives any reimbursement for the amount of the discount." (Emphasis added); 86 Ill. Adm. Code. 130.2125(a).

Paragraph (b) of the regulation clarifies what is meant by a "Discount Coupon" and again states that "***where a retailer allows a purchaser a discount*** from the selling price on the basis of a discount coupon," the retailer must include as part of its "gross receipts" any reimbursement for the coupon from the manufacturer.

With the exception of the Corporate Customer Credit, which will be discussed later, Martin did not allow its customers any discounts in connection with the Deere Credits. Thus, the Department's own regulation excludes the application of tax to credits such as these.

2. Martin Did Not Receive Any Automobile Rebates

Paragraph (e)[5] of the regulation is entitled "Automobile Rebates," and states, in relevant part, as follows:

> "***If an automobile dealer accepts a manufacturer's rebate provided by the customer*** as part of the payment for the retail sale of an automobile or other type of vehicle, the amount of the reimbursement or payment paid by the manufacturer to the dealer is part of the taxable gross receipts … ." (Emphasis added); 86 Ill. Adm. Code 130.2125(e).

This part of the regulation cannot apply, since it is directed specifically at automobile dealers, and only in those situations, absent here, where the customer provides the dealer with the rebate.

Paragraphs (a) through (d) of the regulation constituted the entire

[5] **Paragraphs (c) and (d) of the regulation are clearly inapposite, and so they are not discussed.**

regulation prior to 2008, and they, in addition to paragraph (e) just described, are limited to situations where a rebate or payment is tied to a discount enjoyed by the retail customer. After all, the tax is imposed in connection with the sale of goods at retail. Thus, a financial arrangement that has no discernable impact on the retail transaction ought to be ignored.

In 2008, the Department nevertheless created a narrow expansion that taxes rebates even if those rebates are not required to be passed along to the retail customer. Paragraph (f) of the regulation, entitled "Automobile Dealer Incentives," contains this new regulatory language:

> "The taxation of ***automobile dealer incentives*** will depend upon whether the dealer receives a payment from a source other than the purchaser that is conditioned upon the retail ***sale of an automobile***. If a dealer receives payment ***as an incentive for the retail sale of an automobile***, the amount of that reimbursement or payment is part of the taxable gross receipts received by the dealer ***for the sale of that automobile***. If a dealer receives payment in exchange for the purchase ***of an automobile*** from a supplier or manufacturer, and that payment is not conditioned upon the ***sale of that automobile*** to a retail consumer, the amount of that payment is not part of the taxable gross receipts received by the dealer for the retail ***sale of that automobile***. The determination of taxability ... is not dependent on whether the retailer is required to lower the selling price of the vehicle as a condition for receiving the incentive payment." (Emphasis added); 86 Ill. Adm. Code

130.2125(f)

In the Department's published "Summary and Purpose of Amendments" appended to the public notice of the proposed amendment in 2008, it stated:

> "Section 130.2125 of the Department's rules is amended to clarify how ***rebates from automobile manufacturers and other incentives from automobile manufacturers*** are treated for sales tax purposes. ***Automobile*** manufacturer rebates are to be treated in the same manner as other rebates – taxable to the dealer if they are used as part of the consideration for the sale and not taxable if the customer keeps the rebate and does not apply it to the purchase of the automobile. ... . Beginning July 1, 2008, ***the taxation of other automobile dealer incentives*** will depend on whether the incentive is provided to the dealer solely for the ***sale of the vehicle*** or is conditioned on additional sales or other service standards or goals. Incentives provided by manufacturers that are conditioned on additional sales or are conditioned on meeting certain manufacturer required marketing standards, facility standards, or sales and service department satisfaction goals would not be subject to tax." (Emphasis added); 32 Ill. Reg. 17228 (October 31, 2008).

It is hard to imagine how the Department could have more clearly communicated that the treatment of certain incentives described in subparagraph (f) apply only to the automobile industry, which uniquely uses

complex and opaque schemes to manipulate consumer behavior through various finance arrangements, rebates, incentives, and sales gimmicks. The automobile industry is likewise famous for its need to push annual inventory out of showrooms in anticipation of new models. These considerations simply do not exist in other industries, and the construction equipment industry rests perhaps on the extreme opposite end of the spectrum.

If the Department wishes to apply regulations similar to its automobile-industry-specific regulations to other industries, it ought to go about the process properly: by first finding that the target industry's practices warrant such a treatment, and then issuing a regulation directed at those practices.[6] Allowing its auditors to run around the state making up new rules on the fly not only violates the Administrative Procedures Act but deprives taxpayers such as Martin, who are entitled to rely upon the Department's published regulations as written, of due process.

Thus, the inclusion in gross receipts of a manufacturer's rebate occurs only when either (a) the rebate passes through the retailer and results in a discount to the retail customer, or (b) the rebate is part of an automobile sales incentive program described in the regulation. Neither is the case here.

3. Court Decisions Relating to Rebates, Coupons, and Incentives

Section 130.2125 of the Department's regulations has been the subject of only a handful of appellate court cases. In *Ogden Chrysler*, *infra.*, the dispute surrounded a program instituted by Chrysler under which its dealers must sell

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[6] **This assumes that any such hypothetical regulation would be consistent with the statute.**

any Chrysler vehicle to a dealership employee at the dealer invoice price. Chrysler, then, provides the dealer (via a credit) a payment in the amount of 6% of dealer invoice, plus $75. *Id.*, 348 Ill. App. 3d at 947, 809 N.E.2d at 796.

The Court in *Ogden Chrysler* concluded that the dealer payment was includible as part of gross receipts. The Court focused on the link between the rebate and a retail discount. This analysis applied even though the dollar value of the manufacturer's payment was not necessarily equal to the customer's discount:

> "According to Ogden, although it receives a payment, similar to a manufacturer incentive, from Chrysler for a vehicle sold under the Program, an eligible purchaser does not tender any coupons to Ogden as part of the sale. The Chrysler payments never enter into the bargain between Ogden and the eligible purchaser, and, therefore, the Chrysler payments cannot be considered part of the transaction between Ogden and the purchaser. ... .
>
> "We reject Ogden's argument. Although an eligible purchaser does not literally tender any coupons to Ogden when he or she purchase a vehicle under the Program, it can reasonably be interpreted that the purchaser effectively does so when he or she chooses a participating dealer with which to do business and chooses to purchase a vehicle under the Program at a reduced price. Ogden's receipt of a payment from Chrysler under the Program constitutes a reimbursement very similar to that described in section 130.2125(b)(2)(A) because Ogden receives the

> payment ***as a result of providing a reduced price to an eligible purchaser***." 358 Ill. App. 3d at 955, 809 N.E.2d at 802.

This passage clarifies that the pass-through benefit to the consumer was an important, and ultimately the controlling, factor in the *Ogden Chrysler* court's ruling. The concept to emerge is that of viewing a retail sale linked to a manufacturer's incentive program as a three-party transaction among the purchaser, the dealer, and the manufacturer. It is the manufacturer's economic involvement at the level of the individual sale—via a discount to the retail customer—that allowed the *Ogden Chrysler* court to distinguish its decision from the contrary conclusion reached by the Supreme Court in *Chet's Vending Service*. That link to the customer's purchasing experience is critical to making the sale a three-party transaction. Only when such a link exists may the manufacturer's discount be considered part of the "consideration" for the sale:

> "Ogden points out that the court in *Chet's Vending Service, Inc.* noted that it was dealing with two separate transactions—the sales to employees, followed by a subsidy payment by the employer—and that it would have to treat the food and beverage sales as a single sale to both the employer and employee in order to find that the payments in question were taxable gross receipts. Ogden argues that here there are also two separate, independent transactions: the sale of a vehicle by Ogden to an eligible purchaser, followed by a payment by Chrysler to Ogden. ... .
>
> ... .

> "[C]ontrary to Ogden's assumption, each transaction involves not only Ogden and the purchaser, but also Chrysler. This is so because, but for Ogden's agreement to sell or lease vehicles under the Program, Ogden would not receive the payments from Chrysler. Thus, each Chrysler payment is a bargained-for element of every transaction … ." (Emphasis added); 348 Ill. App. 3d at 953, 809 N.E.2d at 800.

That concept of a manufacturer's payment as a "bargained-for element of every transaction" ties the terms of Section 130.2125 to the definition of "selling price" as the "consideration for the sale" found in Section 1 of the Act. 35 ILCS 120/1; 86 Ill. Adm. Code 130.2125.

Here, the record establishes that there truly are two separate transactions, one involving Martin's purchase from Deere, and another involving the customer's purchase from Martin. The customer purchasing equipment from Martin is completely unaffected by the Deere Credits. There is no published retail price from which the customer receives a Deere-financed discount. The customer simply purchases an item in a normal retail sale, and Martin simply purchases the equipment from Deere at the adjusted MDP price. It was the legislature's decision to tax gross receipts rather that a retailer's net receipts, and a credit that serves no purpose other than reducing Martin's cost of goods sold, without projecting any effect onto the retail transaction, cannot be deemed a part of "gross receipts" outside the imagination of the Department's auditors. Surely not a single legislator who voted to pass the Act would agree with the application the Department is attempting to assert in this case.

4. The Department is Barred by *Res Judicata*

The only appellate court decision to address the regulation following the 2008 amendment is a 2013 unpublished order issued by the Fourth District Appellate Count pursuant to Supreme Court Rule 23. See *Mattoon Kawaski [sic] Yamaha, Inc. v. Department of Revenue*, No. 4-12-1116, 2013 Ill. App. 121116-U, 2013 WL 5775145 (unpublished Rule 23 order) (4th Dist., October 23, 2013). That case dealt with a "dealer reserve payment" that appeared on invoices as part of the dealer cost when purchasing motorcycles from Kawasaki or Yamaha. When the dealer completed a retail sale, the manufacturers would return this payment to the dealer

In beginning its analysis, the Court wrote, "A decision in this case is dependent upon an understanding of (1) the nature of plaintiff's business, (2) the procedure related to plaintiff's purchase of inventory, and (3) the effect of a retail sale on plaintiff's bookkeeping." Id., at ¶14. The Court spent considerable space discussing the latter point, notwithstanding the Supreme Court's admonition that the taxpayer's accounting practices are not relevant. *Chet's Vending Service*, 71 Ill. 2d at 42, 374 N.E.2d at 470; *see also Ogden Chrysler*, 348 Ill. App. 3d at 954, 809 N.E.2d at 801. The Court was not disregarding the notion that a retailer's internal accounting was not controlling; instead, the *Mattoon Kawasaki* court examined the dealership's internal accounting as a means to determine whether, in economic reality, each retail transaction "involves not only [the dealership] and the purchaser, but also [the manufacturer]." *Ogden Chrysler, infra*. Just as the dealership's internal accounting is not controlling on this question, neither is the Department's

wishful thinking. The Court summarized its view of the statute and regulation as follows:

> "We determine the meaning of section 130.2125(e) provides that [the Department] is required to tax the total amount of plaintiff's sale of a vehicle, including those payments received from sources other than the retail purchaser. Indeed, the following language in the section supports our interpretation. It sets forth: 'The taxation of automobile dealer incentives will depend upon whether the dealer receives a payment from a source other than the purchaser (toward the total sale price of the vehicle) that is conditioned upon the retail sale of an automobile. [Citation]. We added the bracketed language to make the provision clear that these 'incentives' should be taxed ***only if*** they supplement the purchase price of the vehicle." (Emphasis in original); *Mattoon Kawasaki* at ¶21.

This is an important holding. The Court concluded that, for a manufacturer's payment to be taxable, it must "supplement the purchase price of the vehicle" even under the portion of the regulation that imposes a tax when the program in question does not require that the customer receive a discount from the retailer. The Court held that regardless of what the manufacturer's program requires of a retailer, the payment is not taxable unless it actually constitutes a supplement to the retail purchase. While such a "supplement" may not necessarily equate to a retail discount, it at least means that the payment is a factor in the retail sale's negotiated terms.

This all ties logically to the statutory and regulatory definitions of "gross receipts," which is the "consideration" for the retail sale, nothing more. It also ties to the decision in *Ogden Chrysler*, which prompted the Department's 2008 amendments. In *Ogden Chrysler*, the Court's conclusion rested on the determination that the payments from Chrysler were part of the "bargain-for consideration" the dealer received in the retail transaction. Nowhere has the Department suggested that it intended its 2008 regulation to expand beyond the Court's holding in *Ogden Chrysler*.

The law of *Ogden Chrysler*, *Chet's Vending*, and *Mattoon Kawasaki* is: when a retailer and its customer are negotiating an individual retail transaction, is the manufacturer's payment program part of the "bargained for" consideration in the mind of either the retailer or the purchaser? If the answer is no, then the analysis ends, and the payment is not a portion of the "consideration" for the sale. In the current case, the answer is unequivocally no.

Even though the *Mattoon Kawasaki* decision is an unpublished Rule 23 order, the Department ought to be barred by *res judicata* from attempting to bite a second time at essentially the same apple in this case. Consider the logic and applicability of the following passage:

> "In this case, the State has asked plaintiff to pay sales tax on money it received as reimbursement of the exact nature and the exact sum it had previously paid to the manufacturer. The 'dealer reserve payment' was not affected by the actual retail sale price but rather, it was a set percentage of the MSRP, wholly independent from the gain or loss actually realized by plaintiff in its sale of the

> vehicle to the customer. It is not returned to plaintiff as a gross receipt upon the sale, but as a rewarded reimbursement after the sale. In other words, the return of the "dealer reserve payment" to plaintiff was contingent only upon the ***occurrence*** of a retail sale, not upon the ***amount*** of the retail sale, it was not included in the selling price, and the same should not be included in plaintiff's gross receipts." (emphasis in original) *Mattoon Kawasaki* at ¶20.

This case can be distinguished only in two respects, both of which favor Martin. First, the Normal Deere Credits are a percentage of MDP rather than MRSP. Second, Martin need not complete a retail sale to obtain a credit. It can simply allocate an item in the DORF program.

5. The Special Case of the Corporate Customer Credit

Unlike the Normal Deere Credits, the Corporate Customer Credit does have an impact on the sale price paid by Martin's retail customer participating in that program. As described by Bane's affidavit, the program provides Martin with a credit against MDP for the sale of equipment to certain qualifying customers. The credit is contingent on Martin's agreement to complete the retail sale at no greater than a price dictated by Deere. The customer is unaware of the credit.

The Department's insistence on levying tax on the Corporate Customer Credit is the most baffling aspect of its conduct in this case. The Department's own regulation contemplates exactly this arrangement:

> "If a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon for which the retailer will

> receive full or partial reimbursement (from a manufacturer …), the retailer incurs … Tax liability on the … amount of any coupon reimbursement. ….
>
> "[I]f the retailer receives a discount from a manufacturer … when purchasing tangible personal property for resale, and, pursuant to a contract with that manufacturer…, the retailer issues discount coupons applicable to the sale of the property, ***the coupons shall not be deemed to be reimbursed by the manufacturer***." (Emphasis added). 86 Ill. Adm. Code 2125(b)(2).

One wonders how the Department could view this exception to tax as describing anything other than a program exactly like the Corporate Customer Program. In that program, (A) Martin receives a credit from Deere on the purchase of equipment for resale, and (B) pursuant to a contract with Deere, Martin discounts the price of the item upon its sale of the property to a retail purchaser. It follows, then, that the Corporate Customer Credit is not deemed to be reimbursed by Deere for the purposes of calculating Martin's "gross receipts" under 86 Ill. Adm. Code 130.2125(b)(2)(A).

CONCLUSION

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,

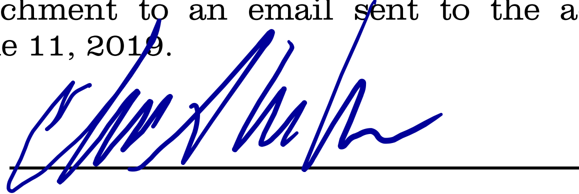
Martin Equipment of Illinois, Inc.

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.



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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