

**ILLINOIS INDEPENDENT TAX TRIBUNAL**

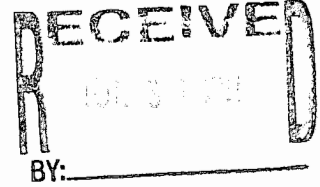
Martin Equipment of Illinois, Inc., an  
Illinois Corporation,

Petitioner,

v.

Illinois Department of Revenue,

Respondent.



187786

**PETITION**

The Petitioner, Martin Equipment of Illinois, Inc. (“Martin”), by and through its attorneys, Sutkowski Law Office Ltd., hereby petitions the Illinois Independent Tax Tribunal to review and modify the Notice of Tax Liability attached hereto as Exhibit A (“Notice”) issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

1. The Department issued the Notice on May 30, 2018, assessing a tax in the amount of \$278,066.00, a late payment penalty in the amount of \$23,517.00, and interest in the amount of \$38,770.49, for a total assessment of \$340,353.49, arising out of an audit of Martin’s Retailer’s Occupation Tax (“Sales Tax”) and Use Tax for the period from July 1, 2012, through December 31, 2014 (the “Audit Period”). A copy of the Notice is attached to this Petition as Exhibit A.

2. Martin is an Illinois corporation with its principal place of business at 400 West Martin Drive in Goodfield, Illinois. The Petitioner's Tax Account ID is 0467-4774.

3. Martin timely filed appropriate retailer's occupation tax returns (the "Returns") for each reporting period during the Audit Period. On each Return, Martin accurately reported the full retail purchase proceeds paid by non-exempt customers as its gross receipts and calculated the tax due appropriately based on that figure. Martin accompanied each such Return with a payment of tax as shown on the Return.

4. A substantial share of Martin's business involves the retail sale of construction equipment manufactured by John Deere & Co. ("Deere"). Martin purchases equipment from Deere and then re-sells it to retail customers, some of whom are subject to Sales Tax.

5. When purchasing equipment from Deere, Martin receives an invoice for a price known as the Moline Dealer Price ("MDP"). Once Martin sells the equipment to a retail customer, Deere provides Martin with a credit for a portion of the MDP (the "Deere Credit") to be used against later purchases.

6. The Deere Credit is considered a trade secret of Deere and is not disclosed to retail customers. There are two different categories of the Deere Credit relevant to this Petition:

(a) The normal Deere Credit (the "Normal Deere Credit") varies from time-to-time and can vary depending on the specific equipment sold,

but which applies substantially at all times in some form and applies to substantially every item of equipment. The Normal Deere Credit does not impact the sale price of the equipment to which it applies and does not constitute any part of the consideration paid for the retail sale.

(b) A credit that applies only with respect to sales to large customers who have negotiated purchase pricing directly with Deere's corporate offices. This credit (the "Corporate Customer Credit") is extended to dealers such as Martin in exchange for the dealer's sale of the equipment to the specific customer at the price previously negotiated by Deere.

8. The Department assessed a deficiency of \$87,673.89 on Martin after concluding that Martin's "gross receipts" as defined by the Retailer's Occupation Tax Act should have included the Deere Credits in addition to the actual retail purchase payments made by Martin's customers. In making this assessment, the Department erroneously interpreted its own regulation found at 86 Ill. Adm. Code 130.401.

9. 86 Ill. Adm. Code 130.401 provides for certain circumstances where a retailer's "gross receipts" must include proceeds other than the actual retail purchase proceeds paid by non-exempt retail customers. These circumstances fall into six categories described in the five sub-paragraphs (a) through (f) of the regulation. None of these situations are applicable to the Deere Discounts, to wit:

(a) Paragraphs (a) and (b) of the regulation (86 Ill. Adm. Code 130.401(a), (b)) define certain circumstances where a manufacturer's or

wholesaler's discount is passed through to a retail customer. Paragraph (b)(2) describes the circumstances of the Deere Corporate Credit and exempts such a credit from being included as a part of the retailer's gross receipts.

(b) Paragraph (c) of the regulation (86 Ill. Adm. Code 130.401(c)), titled "Gift Situations," states that where a retailer gives an item to a customer for free, and without the gift being contingent on the purchase of other goods, the retailer must pay use tax on the retailer's cost of the gifted item. The circumstances described in paragraph (c) have no applicability to the Deere Credits.

(c) Paragraph (d) of the regulation (86 Ill. Adm. Code 130.401(d)), titled "Trading Stamps," deals with a situation where a retailer accepts trading stamps in lieu of cash for the sale of property. The circumstances described in paragraph (d) have no applicability to the Deere Credits.

(d) Paragraph (e) of the regulation (86 Ill. Adm. Code 130.401(e)), is titled "Automobile Rebates." Like paragraphs (a) and (b), this subparagraph relates specifically to a discount that is passed through to a retail customer. Further, paragraph (e) applies only to automobile dealers and not construction equipment dealers such as Martin. The circumstances of paragraph (e) have no applicability to the Deere Credits.

(e) Paragraph (f) of the regulation (86 Ill. Adm. Code 130.401(f)) is titled "Automobile Dealer Incentives." It is the only portion of

the regulation than does not involve a discount enjoyed by the retail customer. However, paragraph (f) is limited by its terms to those situations where “a dealer receives payment as an incentive for the retail sale of an automobile” and does not apply to other industries. The circumstances of paragraph (f) have no applicability to the Deere Credits.

10. The regulation would not apply to the Deere Discounts even if Martin were an automobile dealer and the Deere equipment were automobiles. The Department is bound by the principle of *res judicata* by the Illinois Appellate Court decision in *Mattoon Kawasaki [sic] Yamaha, Inc. v. Department of Revenue*, No. 4-12-1116, 2013 Ill. App. 121116-U, 2013 WL 5775145 (unpublished Rule 23 order) (4<sup>th</sup> Dist., October 23, 2013). In that decision, the Illinois Appellate Court ruled that 86 Ill. Adm. Code 130.401(f) includes payments from sources other than the retail customer “*only if* they supplement the purchase price of the vehicle.” (emphasis in original) *Id.* at ¶21.


11. Here, the Department erred by concluding that the Deere Credits were taxable as part of Martin’s “gross receipts” under the Act.

Wherefore Martin Equipment of Illinois, Inc. prays that this Independent Tax Tribunal order that the Department’s Notice be modified by deducting the assessment attributable to the Department erroneous treatment of the Deere Credits, in addition to all penalties and interest associated therewith.

Respectfully submitted,

Martin Equipment of Illinois, Inc.

By: SUTKOWSKI LAW OFFICE LTD.

By:   
(One of its attorneys)

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# Notice of Tax Liability



#BWNKMGV  
 #CNXX X143 9XX2 2880#  
 MARTIN EQUIPMENT OF IL INC  
 400 W MARTIN DR  
 GOODFIELD IL 61742-7535

May 30, 2018



Letter ID: CNXXX1439XX22880

**Account ID:** 0467-4774  
**Reporting period:** December 31, 2014

We have audited your Sales/Use Tax & E911 Surcharge account for the reporting periods July 01, 2012, through December 31, 2014, and the liability has been processed on Form EDA-105-R, ROT and E911 Surcharge Audit Report. As a result, we have assessed the amounts shown below.

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

If you do not agree, you may protest this notice within specific time periods. See the "Protest Rights" section on the following page of this notice for additional information and instructions.

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 to satisfy your liability.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following pages of this notice for additional information and instructions.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	278,066.00	0.00	278,066.00
Late Payment Penalty Increase	23,517.00	0.00	23,517.00
Interest	38,770.49	0.00	38,770.49
<b>Assessment Total</b>	<b>\$340,353.49</b>	<b>\$0.00</b>	<b>\$340,353.49</b>

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.

**AUDIT BUREAU**  
**TECHNICAL REVIEW SECTION**  
**ILLINOIS DEPARTMENT OF REVENUE**  
**PO BOX 19012**  
**SPRINGFIELD IL 62794-9012**

217 785-6579

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## Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by a filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1, *et seq.*

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## Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns. For those under bankruptcy protection this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

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## Explanation of Penalties and Fees

For more detailed information, see Publication 103, Penalties and Interest for Illinois taxes.

### Are penalties ever abated?

If you were unable to either timely pay the required amount of payments, pay the tax you owe by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. A bad check or negligence penalty may also be waived due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations. A fraud penalty or cost of collection fee cannot be waived.

### How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax. Interest cannot be waived.

**Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.

**Late-payment penalty for underpayment of estimated or accelerated tax due** - You owe this penalty if you were required to make estimated or accelerated tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.

**Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the due date of the payment or the original due date of the return.

**Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.

**Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.

**Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.

**Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.

**Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

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## Protest Rights

If you do not agree, you may protest 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 July 30, 2018. 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, 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.