ILLINOIS INDEPENDENT TAX TRIBUNAL

TEXAS CAPITALIZATION RESOURCE GROUP, INC., Petitioner, v. ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	20 TT 93 Hon. Brian F. Barov

PETITIONER TEXAS CAPITALIZATION RESOURCE GROUP, INC.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Remarkably, the Department's Response Brief fails to address a single argument raised in Texas Capitalization Resource Group, Inc.'s ("Texas Capitalization") Opening Brief. All of the points and arguments in Texas Capitalization's Opening Brief are thus uncontested, including the critical threshold argument that this entire proceeding is moot. *See* Opening Br. at 2, 5-6. The Tribunal should grant Texas Capitalization's motion on that dispositive issue alone.

In skipping over the mootness issue, the Department's Response Brief provides a collection of excerpts regarding the purported legal standard for equitable estoppel in disputes between two private parties. But the Department, which carries the burden of establishing the viability of equitable estoppel here, fails to cite a single case from Illinois (or any court) applying this doctrine against a taxpayer in a context similar to ours. Beyond that, even assuming equitable estoppel applies (and Texas Capitalization contends it does not), the undisputed facts establish that ***it was expressly disclosed*** to the Department that Texas Capitalization did not purchase the Aircraft, which precludes a finding of estoppel as a matter of law. The Department ignored that disclosure, along with its own precedent, in deciding to proceed forward with the audit of Texas

Capitalization. For these reasons, Texas Capitalization respectfully requests that the Tribunal grant its Motion for Summary Judgment.

ARGUMENT

A. The Department fails to address, much less even reference, Texas Capitalization's threshold argument that this proceeding is moot.

As just stated, the Department's Response Brief fails to address (or even acknowledge) ***any*** of the arguments in Texas Capitalization's Opening Brief. In particular, the Department fails to address, and concedes, the threshold argument that this entire proceeding is moot based upon the Department's own representations—and thus the Tribunal need not address the estoppel defense. *See, e.g.*, Texas Capitalization's Opening Br. at 2 ("[T]o even consider the merits of the estoppel defense, the Tribunal must make a threshold finding that this entire proceeding is ***not facially moot***—a finding that is inconceivable given the undisputed facts and the Department's own concessions."); *see also id.* at 5-6 (explaining mootness argument). That dispositive argument is uncontested. *C.R. England, Inc. v. Dep't of Emp. Sec.*, 2014 IL App (1st) 122809, ¶ 82 (issue is conceded where party "fail[s] to respond" to arguments in opposing party's brief).

Summary judgment should therefore be granted on that basis without even reaching the merits of the Department's purported "estoppel" defense.

B. The Department's alleged estoppel defense is legally unsupportable.

The Department searched far and wide, across many jurisdictions and going back well over 70 years ago, to cobble together support for its purported estoppel defense. But there is not a single case cited where ***any*** Illinois court has ***ever*** applied the doctrine of equitable estoppel in a dispute between a party and the Department regarding the identity of the correct taxpayer (or any other analogous situation). In fact, it appears that no court in any jurisdiction has ever applied equitable estoppel in this context. This Tribunal should reject the Department's invitation to be the first to

apply equitable estoppel in this new context. Because the Department carries the burden to set forth a cognizable legal basis for the estoppel defense, and has failed to do so, summary judgment should be granted in Texas Capitalization's favor without any need to address the alleged factual basis for the estoppel defense.

That is, the Department includes a haphazard assortment of excerpts from cases referencing equitable estoppel, but no attempt is made to explain why and how that doctrine applies here.

For example, the Department's leading Illinois cases, stretching all the way back to 1930, 1943, and 1954, all relate to "title estoppel," a specific statutorily-based doctrine that applied to the sale of automobiles over 50 years ago. *National Bond & Investment Company v. Shirra, et al.*, 255 Ill. App. 415, 419 (1st Dist. 1930) (cited by Department) (doctrine based upon Uniform Sales Act[1]); *Mori v. Chicago Nat. Bank*, 3 Ill. App. 2d 49, 55–56 (1954) (cited by Department) ("doctrine of title by estoppel" applies to specific situation where automobile "owners have been estopped from asserting title as against innocent purchasers where they have delivered not only possession but in addition some instrument evidencing ownership or authority to sell or encumber the entrusted chattel."); *General Finance Corporation v. Nimrick*, 319 Ill. App. 98, 100 (1st Dist. 1943) (another case in car title context). The Department offers no rationale why these cases are relevant to this proceeding, nor does it appear that "title by estoppel" is even alive today.

The other set of cases the Department cites refers to equitable estoppel, but this time again in the statutory context of whether the debtor has sufficient "rights in collateral" under the Uniform Commercial Code (*i.e.*, "one cannot encumber another [person's] property in the absence of

[1] The Uniform Sales Act provided, in relevant part: "Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, ***unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell***." *Nat'l Bond & Inv. Co. v. Shirra*, 255 Ill. App. 415, 418 (Ill. App. Ct. 1930) (emphasis added).

consent, estoppel or some other rule"). *E.g.*, *Matter of Pubs, Inc. of Champaign*, 618 F.2d 432, 436 (7th Cir. 1980) (cited by Department); *In re Standard Foundry Prod., Inc.*, 206 B.R. 475, 479 (Bankr. N.D. Ill. 1997) (cited by Department). But this has no discernable relevance to this proceeding and the Department fails to provide any argument for such relevance.

The Department admits that the only legal authority it has for "equitable estoppel in tax cases" are purportedly federal income cases applying the "duty of consistency." But that doctrine can be distinguished in a wholesale fashion because a required element for it to apply is that "the taxpayer desires to change the representation, previously made, in a later year after the statute of limitations on assessments bars adjustments for the initial year."[2] *Hollen v. Comm'r*, 79 T.C.M. (CCH) 1719 (T.C. 2000), *aff'd*, 25 F. App'x 484 (8th Cir. 2002) (cited by Department). Under no set of facts is this element established and the Department does not contend otherwise: (i) the statute of limitations has not run yet, (ii) Texas Capitalization has not changed its representation in a subsequent audit, and (iii) in any event Texas Capitalization raised this legal defense in August 2020—long before the limitations period expired and years after the Department's auditor was informed that Texas Capitalization did not purchase the Aircraft at issue.

In sum, no viable legal authority exists for applying equitable estoppel in this proceeding.

C. Even assuming equitable estoppel applies, it should be rejected as a matter of law based upon the undisputed facts.

Regardless, the Department's estoppel defense folds under scrutiny when applied to the undisputed facts in this case. The Department's own cited cases establish that estoppel cannot apply where the party asserting the doctrine (here, the Department) failed to exhibit justifiable reliance, or had "readily ascertainable means" of determining that Texas Capitalization was not

[2] None of the three elements required to invoke the duty of consistency are met here. But because this third element cleanly and irrefutably establishes the duty does not apply, it is not necessary to address the other elements in detail.

the owner of the Aircraft. *Mori*, 3 Ill. App. 2d at 56 (party asserting estoppel exhibited negligence by failing to ever obtain a certificate of title for its automobile purchase, leading the Court to hold that "[d]efendant's reliance upon the dealer's verbal representations of ownership without resort to readily ascertainable means of determining ownership precludes it from invoking the doctrine of estoppel."); *see also Nimrick*, 319 Ill. App. at 100 (not applying estoppel because plaintiff failed to establish it "had no ready means of ascertaining the facts").

In *Mori*, the court declined to apply equitable estoppel because it determined that the party asserting the doctrine failed to take readily available ***affirmative steps*** to discover the issue of ownership. But the case for rejecting equitable estoppel here is far more clear-cut ***because it was plainly disclosed to the Department in the rolling stock exemption application that*** TCRG SN4057, LLC—not Texas Capitalization—owned the Aircraft. In addition, the Department's ***own prior precedent*** established that Texas Capitalization was not the correct taxpayer.[3] The Department ignored the disclosure in the rolling stock exemption application and ignored its own precedent. Those facts are undisputed, never challenged in the Department's Response Brief, and are sufficient by themselves to reject application of equitable estoppel.

The Department advances a number of tangential factual arguments that are immaterial to the conclusion that the Department failed to follow "readily ascertainable means" in its decision to audit the legally incorrect taxpayer. But given the presentation of those facts is incorrect or misleading, Texas Capitalization will briefly address them:

[3] In *Department of Revenue of the State of Illinois v. ABC Business Taxpayer*, UT 11-08 (Aug. 26, 2011), the administrative law judge held that "[a]s the Department has stated, nothing in the Use Tax Act or case law requires that an LLC that is treated as a disregarded entity for income tax purposes must be treated as a disregarded entity for use tax purposes." *Id.* (citing *Kmart Michigan Property Services, LLC v. Department of Treasury*, 283 Mich. App. 647 (2009), which held that filing as a disregarded entity for federal income tax purposes does not require a single member LLC to be a disregarded entity for purposes of Michigan's Single Business Tax Act).

- **Disclosure of purchase agreement.** The Department claims that Texas Capitalization had a "duty" to disclose the purchase agreement for the Aircraft. The Department's claim of a purported "duty" arises from the "duty of consistency"—but that does not apply here. The Department otherwise fails to explain why or how Texas Capitalization, which did not purchase the Aircraft, had a duty to produce ***TCRG's*** purchase agreement. In the end, disclosure of the purchase agreement was entirely unnecessary because the correct ownership of the Aircraft was disclosed in the rolling stock exemption application.

- **References in memos to "TCRG."** The Department claims that references in certain emails and memos to "TCRG," without a reference to any LLC specifically, were intended to be for "Texas Capitalization," the Petitioner. The Department misreads these documents. "TCRG" is not expressly defined to refer to "Texas Capitalization." Any differences in the interpretation of these emails are irrelevant to this motion.

- **Power of Attorney.** In executing the power of attorney on behalf of "Texas Capitalization," Mr. Crowther simply indicated he was representing the ***entity that was named in the Department's audit***. It was not a representation that Texas Capitalization owned the Aircraft or was the correct party. It would have made no sense for Mr. Crowther to submit a power of attorney on behalf of an entity that was not subject to the audit (TCRG).

None of these issues create a genuine issue of material fact because the Department indisputably knew the owner of the Aircraft (and correct taxpayer) from the beginning of the audit.

CONCLUSION

For these reasons, Texas Capitalization respectfully requests that the Tribunal grant its motion for summary judgment, cancel and declare the Notice of Tax Liability against Texas Capitalization null and void, and enter judgment in Texas Capitalization's favor in this proceeding.

Dated: May 24, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Thomas G. Weber, Petitioner's attorney, hereby certify that on May 24, 2021, a copy of Petitioner Texas Capitalization Resource Group, Inc.'s Reply in Support of its Motion for Summary Judgment, was sent via e-mail to:

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