

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

NAPERVILLE IMPORTS, INC. d/b/a)
MERCEDES-BENZ OF NAPERVILLE)
)
Petitioner,)
)
vs.)
)
ILLINOIS DEPARTMENT OF REVENUE,)
)
Respondent.)

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Case No. BY: _____
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PETITION

Petitioner NAPERVILLE IMPORTS, INC. d/b/a MERCEDES-BENZ OF NAPERVILLE ("Naperville Imports") petitions this Tribunal for review of two Notices of Tax Liability and a Notice of Tentative Audit Denial of Claim issued by Respondent ILLINOIS DEPARTMENT OF REVENUE.

STATEMENT OF JURISDICTION

1. Naperville Imports, Inc. brings this petition pursuant to the Illinois Independent Tax Tribunal Act of 2012. 35 ILCS 1010 et seq.
2. This Tribunal has jurisdiction because this matter involves two Notices of Tax Liability, each of which was issued by the Department on March 19, 2014, and each of which asserts a Retailers' Occupation Tax Act liability in excess of \$15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45. The Notice of Tentative Audit Denial of Claim was also issued by the Department on March 19, 2014, and although the amount of the claim is less than \$15,000, the notice is part of aggregate amounts for the same tax year or audit period in excess of \$15,000. 35 ILCS 1010/1-45(a).

3. The first Notice of Tax Liability is for a Retailers' Occupation Tax Act liability of \$371,638 for the period of July 1, 2007 to June 30, 2009 and proposed penalties and interest of \$148,655 and \$133,208.31, respectively. A copy of the Notice of Tax Liability is attached as Exhibit A.

4. The second Notice of Tax Liability is for a Retailers' Occupation Tax Act liability of \$154,461 for the period of July 1, 2009 to March 31, 2010 and proposed penalties and interest of \$31,398 and \$17,095.37, respectively. A copy of the Notice of Tax Liability is attached as Exhibit B.

5. The Notice of Tentative Audit Denial of Claim is for a Retailers' Occupation Tax Act liability of \$2,530 for the period of July 1, 2007 to March 31, 2010. A copy of the Notice of Tentative Audit Denial of Claim is attached as Exhibit C.

THE PARTIES

6. Petitioner is Naperville Imports, Inc. d/b/a/ Mercedes-Benz of Naperville, 1569 W. Ogden Ave., Naperville, Illinois 60540-3906. Its phone number is (630) 305-4560.

7. Petitioner's attorneys are Fred Marcus, Horwood, Marcus & Berk Chtd., 500 West Madison St., Ste 3700, Chicago, Illinois 60661, (312) 606-3200 and Brian R. Harris, Akerman LLP, 401 East Jackson St., Ste. 1700, Tampa, Florida 33602.

8. Petitioner's tax identification number is 65-1151451.

FACTS

9. Naperville Imports, Inc. was engaged in the business of selling and leasing motor vehicles at retail in Illinois.

10. In order to provide financing to its customers and facilitate more sales, Naperville Imports, Inc. entered into an agreement with Mercedes-Benz Financial Services USA, LLC. Mercedes-Benz Financial Services USA, LLC agreed to purchase motor vehicles from Naperville Imports, Inc. for the purpose of leasing those motor vehicles to Naperville Import, Inc.'s customers.

11. These vehicle leasing transactions would begin with Naperville Imports, Inc. entering into a lease directly with one of its customers. Upon the execution of the lease, Naperville Imports, Inc. sold the vehicle to Mercedes-Benz Financial Services USA, LLC and assigned the lease to Mercedes-Benz Financial Services USA, LLC.

12. Under Illinois law, Retailers' Occupation Tax is imposed on the sale of the vehicle from Naperville Imports, Inc. to Mercedes-Benz Financial Services USA, LLC rather than on the lease payments from the lessee to the lessor. Accordingly, after the sale of each vehicle to Mercedes-Benz Financial Services USA, LLC, Naperville Imports, Inc. timely submitted a sales tax transaction return ("ST-556") to the Department and paid the tax that was due.

13. In computing the sales price upon which Retailers' Occupation Tax was due, Naperville Imports, Inc. applied certain advance trade credits that Mercedes-Benz Financial Services USA, LLC possessed as a result of vehicles that it had previously traded in to Naperville Imports, Inc. These advance trade in credits are specifically authorized by Illinois law, and they reduce the sales price upon which the Retailers' Occupation Tax or Use Tax is computed.

14. ILCS § 105/2 and ILCS § 120/1 define "Selling price" as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property

other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, ..." (emphasis added).

15. The Department has promulgated a regulation that addresses trade in credits. 86 Ill Admin. Code § 130.455. The Department's regulation specifically authorizes two types of trade-in credits: so-called "contemporaneous" trade-ins (i.e., where a customer trades in a vehicle at the same time that the customer purchases a new vehicle) and "advance" trade-ins (i.e., where a customer trades in a vehicle but does not purchase a new vehicle until a later time).

16. With respect to advance trade-in credits, the regulation provides that:

d) Advance Trade-ins

A transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, *the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advanced trade-in transaction.* Advance trade credits not used within the time specified expire and may not be used subsequent to the 9 month credit period. Advance trade credits are non-transferable.

1) In order to apply the trade-in credit toward the purchase price of a vehicle, the documents recording the purchaser's contractual obligation to purchase need not specify the name, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase within the specified amount of time.

2) Advance trade-in credit given by the dealer to the purchaser in the amount of the value of or credit given for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash, and will not affect the purchaser's ability to apply the advance trade credit toward the purchase of one or more vehicles, so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a vehicle or vehicles purchased. (Section 1 of the Act)

3) Documentation evidencing an advance trade-in transaction must include the following: the contract establishing the value of or credit given for a traded-in vehicle, the obligation to purchase a vehicle, and the date of

expiration of the advance trade-in credit; the bill of sale for the traded in vehicle; and the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade.

86 Ill. Admin. Code 130.455(d) (emphasis added).

17. That is, to obtain an advance trade credit under the Department's regulation, a person trading in a vehicle must enter into a written contract with the dealer promising to use the credit within nine months of the trade. 86 Ill. Admin. Code § 130.455(d).

18. Mercedes-Benz Financial Services USA, LLC traded in various vehicles and entered into the required contracts with Naperville Imports, Inc. to obtain advance trade in credits, which Mercedes-Benz Financial Services USA, LLC used when purchasing the vehicles that are the subject of the Department's Notice of Tax Liability.

19. Mercedes-Benz Financial Services USA, LLC operated its business through two captive titling trusts. Initially, Mercedes-Benz Financial Services USA, LLC directed Naperville Imports, Inc. to title the vehicles that it purchased in the name of DCFS Trust.

20. Later, Mercedes-Benz Financial Services USA, LLC restructured its business and began titling vehicles that it purchased from Naperville Imports, Inc. in the name of Daimler Trust, which like DCFS Trust was also a captive titling trust.

21. Mercedes-Benz Financial Services USA, LLC at all times was the owner of the Mercedes-Benz vehicles titled in the name of the titling trusts.

22. During this transition, some of the vehicles that were traded in to generate advance trade-in credits were titled in the name DCFS Trust while the vehicles that were purchased using those advance trade-in credits were titled in the name of Daimler Trust.

23. The Department audited Naperville Imports for the periods of July 1, 2007 to June 30, 2009 and July 1, 2009 to March 31, 2010. On March 19, 2014, the Department issued two Notices of Tax Liability asserting an additional Retailers' Occupation Tax Act liability.

24. The Department's proposed tax liabilities stem from its disallowance of Naperville Import, Inc.'s application of these advance trade credits to reduce the sales price subject to the Retailers' Occupation Tax that was due on various sales made to Mercedes-Benz Financial Services USA, LLC. The advance trade in credits comprise most of the Department's proposed tax assessments against Petitioner – approximately \$513,101.59 excluding penalties and interest.

25. The Department also proposed tax assessments of approximately \$2,688.95 on lease acquisition fees and approximately \$12,838.33 on dealer marketing incentives. These amounts do not include associated interest and penalties that the Department also alleges are due.

26. The Department also rejected a refund claim for approximately \$2,530 for a single manufacturer buy back transaction.

COUNT I
THE DEPARTMENT'S ASSESSMENT IS CONTRARY TO ILLINOIS LAW

27. The Department disallowed Naperville Import, Inc.'s application of the advance trade credits on Mercedes-Benz Financial Services USA, LLC purchases due to the way in which Mercedes-Benz Financial Services USA, LLC titled the vehicles that it purchased. The Department's disallowance of these advance trade credits is legally erroneous and cannot be sustained.

28. Mercedes-Benz Financial Services USA, LLC previously titled vehicles that it purchased in the name of DCFS Trust. Accordingly, the vehicles that Mercedes-Benz Financial

Services USA, LLC owned and traded in to obtain the advance trade in credits were titled in the name of DCFS Trust.

29. However, Mercedes-Benz Financial Services USA, LLC subsequently began titling the vehicles that it purchased in the name of Daimler Trust, thereby creating a difference between the name on the title of the vehicles it traded in to generate the advanced trade-in credits and the name on the title of the vehicles that it purchased using those credits.

30. Although Mercedes-Benz Financial Services USA, LLC changed how it titled the newly purchased vehicles, Mercedes-Benz Financial Services USA, LLC continued to be the beneficial owner of the vehicles. That is, regardless of how the vehicles were titled, the incidents of ownership continued to rest with Mercedes-Benz Financial Services USA, LLC.

31. Illinois law is clear that the mere name on a title is not determinative of ownership. Under well-settled Illinois law, a “certificate of title is evidence of title, but it is not conclusive and one can own an automobile though the certificate of title is in the name of another.” *Hall v. Country Casualty Ins. Co.*, 204 Ill.App.3d 765, 780 (1990); *Dan Pilson Auto Center, Inc. v. DeMarco*, 156 Ill.App.3d 617, 620-21 (1987) (“Consequently, it is possible that one can own an automobile even though the certificate of title is in the name of another”).

32. This principle has been widely applied in the area of taxation. *See e.g., People v. Chicago Title and Trust Co.*, 75 Ill.2d 479 (1979) (stating in the context of a revenue statute that “[w]hile title may be a factor in determining ownership it is not decisive.”); *Northern Illinois University Foundation v. Sweet*, 237 Ill.App.3d 28, 35 (1992) (“Control of the property and the right to its benefits are more significant than legal title alone in determining the liability for real estate taxes.”)

33. It is "the intent of the parties involved, and not such statutory prerequisites which determine ownership." *Dan Pilson Auto Center, Inc.*, 156 Ill.App.3d at 620. *See also Chicago Title and Trust Co.*, 75 Ill.2d at 492 ("Of far greater importance [than who is reflected as the owner on the title] is control of the property and the right to its benefits."); *Northern Illinois University Foundation*, 237 Ill.App.3d at 35 ("The primary incidents of ownership include ... the right to alienate the property at will.")

34. The Department's regulation does not place any requirement on how vehicles that are purchased with advance trade credits must be titled. 86 Ill. Admin. Code § 130.455. It does, however, contain a provision that provides that: "Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade." *Id.*

35. In interpreting and applying this provision, the Department casts aside a determination of the ownership of the vehicles and instead replaces this analysis with the sole requirement that the vehicles that were traded in to obtain the advance trade in credits must be titled in the same name as the vehicles that were purchased with those credits.

36. Such a requirement is not present in the plain language of the regulation. Nor is it present in the broad language of the statute, which permits both contemporaneous and advance trade-ins without any regard to ownership or how the vehicles were titled.

37. Therefore, the Department's proposed tax liability is legally erroneous because it is based on how the vehicles were titled rather than how they were owned and because the facts surrounding the purchases show that Mercedes-Benz Financial Services USA, LLC was the owner of both the vehicles that were traded in and the vehicles that were purchased using the advance trade credits.

THEREFORE, Naperville Imports, Inc. requests that the Tribunal:

- a) Find that the Department's proposed tax assessment is legally erroneous and that Naperville Imports, Inc. correctly applied the advance trade credits when computing the Retailers' Occupation Tax that was due on the vehicles sold to Mercedes-Benz Financial Services USA, LLC; and
- b) Order such further relief as the Tribunal deems appropriate.

COUNT II
THE PORTION OF 86 ILL. ADM. CODE 130.455 THAT PURPORTS TO PROHIBIT THE TRANSFER OF ADVANCE TRADE CREDITS IS INVALID

38. Even if the Tribunal were to find that Mercedes-Benz Financial Services USA, LLC did not own the vehicles that were purchased using the advance trade in credits or that the Department's regulation otherwise prohibits Naperville Imports, Inc. from applying the advance trade in credits, the Tribunal should invalidate the portion of the regulation that purports to prohibit the transfer of advance trade credits.

39. Neither the Retailers' Occupation Tax Act or the Use Tax Act differentiates between contemporaneous or advance trade ins. As previously described, "selling price" is defined as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, ..." ILCS § 105/2, § 120/1.

40. That is, the statutes only refer to trade-ins. The language of the statutes do not even refer to advance or contemporaneous trade-ins separately, let alone provide any basis for

imposing substantively different requirements for these two types of trade-ins. Because there is no statutory authorization for treating advance trade-ins differently from contemporaneous trade-ins, the Department cannot create this distinction in its regulation.

41. The Department has the authority “to make, promulgate and enforce reasonable rules and regulations relating to the administration and enforcement of the provisions of the Retailers’ Occupation Tax Act.” *Du-Mont Ventilating Co. v. Department of Revenue*, 73 Ill. 2d 243, 247 (1978). However, the Department’s rules “can neither limit nor extend the scope of a statute.” *Id.*

42. In accordance with the broad statutory language regarding trade-ins, the Department's regulation expressly permits the transfer of contemporaneous trade credits. That is, it permits a vehicle owned by one party to be traded in and applied to reduce the taxable "sale price" of a vehicle purchased by a second party so long as the trade is made contemporaneously with the purchase. 86 Ill. Admin. Code § 130.455.

43. However, the Department's regulation purports to limit the transfer of advance trade credits by stating that “[a]dvance trade credits are non-transferable.” 86 Ill. Admin. Code 130.455(d). Since there is no statutory authorization for treating advance trade-ins differently than contemporaneous trade-ins, this portion of the Department's regulation impermissibly limits the scope of the Retailers' Occupation Tax Act and is therefore invalid.

THEREFORE, Naperville Imports, Inc. requests that the Tribunal:

a) Find that if Mercedes-Benz Financial Services USA, LLC's titling of the purchased vehicles in the name of Daimler Trust constitutes a prohibited transfer of the advance trade-in credits under the Department's regulation, that that portion of the regulation is invalid

and that Naperville Imports, Inc. is entitled to apply the advance trade credits when computing the Retailers' Occupation Tax due on the sales; and

- b) Order such further relief as the Tribunal deems appropriate.

COUNT III
ATTORNEYS' FEES AND EXPENSES UNDER 5 ILCS 100/10-55(C)

44. Section 10-55c of the Illinois Administrative Procedure Act, 5 ILCS 100/10-55(c), provides that:

In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees.

45. This provision of law authorizes a party to recover its attorney's fees if the Tribunal invalidates a regulation because the agency exceeded its statutory authority in promulgating the regulation.

THEREFORE, Naperville Imports, Inc. requests that, if the Tribunal invalidates a portion of the regulation as requested in Count II, that the Tribunal award Naperville Imports, Inc. its reasonable expenses of litigation, including attorney's fees.

COUNT IV
THE TRIBUNAL SHOULD DECLINE
TO FOLLOW THE DEPARTMENT'S REGULATION

46. Even if the Tribunal finds that the Department's regulation is valid and prohibits Naperville Imports, Inc. from applying the advance trade credits to the vehicles that Mercedes-

Benz Financial Services USA, LLC purchased, it should nevertheless decline to follow the regulation and find that Naperville Imports, Inc. is entitled to apply the advance trade credits.

47. Under Illinois law, valid regulations are not binding on the courts. They are, at most, entitled to some deference or respect. *American Stores Co.*, 296 Ill.App.3d at 299-300 (“An agency’s interpretation of a statute it is charged with administering, where based on agency expertise, is entitled to *some deference*.”) (emphasis added); *Du-Mont Ventilating Co.*, 73 Ill.2d at 247 (“The rule merely interprets the scope of the statutory exemption provision, and as such is entitled to *some respect* as an administration interpretation of the statute, but it is not binding on the courts.”) (emphasis added); *Van’s Mat’l Co., Inc. v. Department of Revenue*, 131 Ill. 2d 196, 209-210 (1989) (“Even if the regulations were not determined to be unduly restrictive, we are not bound by the Department’s interpretations of the statute.”)

48. It is unclear why the Department would permit the transfer of contemporaneous trade credits but not advance trade credits. Whatever rationale might underlie this distinction, that perceived harm is most certainly not present in this case where the alleged "transfer" is merely because of Mercedes-Benz Financial Services USA, LLC's decision to title the vehicle in the name of a captive entity where Mercedes-Benz Financial Services USA, LLC otherwise continues to direct the purchases of the vehicles and administer the leases. Thus, there is no reason for the Tribunal to apply the regulation in this case.

THEREFORE, Naperville Imports, Inc. requests that, if the Tribunal finds that the Department's regulation is valid and prohibits Naperville Imports, Inc. from applying the trade credits in computing the tax that is due on the vehicles that Mercedes-Benz Financial Services, USA, LLC purchased, that the Tribunal nevertheless decline to follow the Department's

regulation and hold that Naperville Imports, Inc. is entitled to apply the advance trade credits when computing the Retailers' Occupation Tax due on the sales.

COUNT V
ABATEMENT OF LATE PENALTIES

49. Department imposed late penalties against Naperville Imports, Inc. pursuant to 35 ILCS 735/3-3.

50. Late payment penalties may be abated where a taxpayer shows that its failure to pay the tax at the required time was due to reasonable cause. 35 ILCS 735/3-8. Reasonable cause is shown by a good faith effort to determine the proper tax liability.

51. As discussed herein, Naperville Imports, Inc. computed the tax, filed tax returns and paid the tax on these transactions. Naperville Imports, Inc. had a good faith belief that it was entitled to apply the advance trade credits when computing the tax.

THEREFORE, Naperville Imports, Inc. requests that, if the Tribunal sustains the Department's proposed tax assessment, that it nevertheless find that it acted with good faith in determining its tax liability and that it therefore abate all the late payment penalties imposed under 35 ILCS 735/3-3.

COUNT VI
PROPOSED ASSESSMENT ON LEASE ACQUISITION FEES

52. The Department proposed a tax assessment of approximately \$2,688.95, exclusive of interest and penalties, on certain lease acquisition fees that Naperville Imports, Inc. received from its customers at the time that they entered into vehicle leases.

53. These lease acquisition fees are not part of the "selling price" of a taxable sale, and therefore are not subject Retailers' Occupation Tax or Use Tax.

THEREFORE, Naperville Imports, Inc. requests that the Tribunal find that this portion of the Department's proposed tax assessment is legally erroneous, and that it order such further relief as the Tribunal deems appropriate.

COUNT VII
PROPOSED ASSESSMENT ON INCENTIVES

54. The Department proposed a tax assessment of approximately \$12,838.33, exclusive of interest and penalties, on certain marketing incentives that Naperville Imports, Inc. received from Mercedes-Benz Financial Services USA, LLC.

55. These marketing incentives are not part of the "selling price" of any taxable sale, and therefore are not subject to the Retailers' Occupation Tax or Use Tax.

THEREFORE, Naperville Imports, Inc. requests that the Tribunal find that this portion of the Department's proposed tax assessment is legally erroneous, and that it order such further relief as the Tribunal deems appropriate.

COUNT VIII
DENIAL OF REFUND CLAIM

56. The Department denied Naperville Import, Inc.'s refund claim for \$2,530. This was for a refund on a dealer buy back transaction that was previously reported as taxable but for which no tax was actually due.

THEREFORE, Naperville Imports, Inc. requests that the Tribunal find that it is entitled to a refund of this amount, that the Department's denial is legally erroneous and order such further relief as the Tribunal deems appropriate.

Respectfully submitted,

**NAPERVILLE IMPORTS, INC. d/b/a
MERCEDES-BENZ OF NAPERVILLE,**

By: 
Fred O. Marcus

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401 East Jackson St., Ste. 1700
Tampa, Florida 33602
(813) 209-5011

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing **Petition** are true, accurate and correct.

By: Mitchell McGuire
Name: Mitchell McGuire
Its: Vice President

NAPERVILLE IMPORTS, INC. d/b/a
MERCEDES-BENZ OF NAPERVILLE

Subscribed and Sworn to before me
this 16th day of May, 2014.

Kelly L. Kennedy
Notary Public



Notice of Tax Liability

for Form EDA-556, Sales Tax Transaction Audit Report



_____ #BWNKMGV
 _____ #CNXX X114 9832 4163#
 _____ NAPERVILLE IMPORTS INC
 _____ MERCEDES-BENZ OF NAPERVILLE
 _____ 1569 W OGDEN AVE
 _____ NAPERVILLE IL 60540-3906

March 19, 2014



Letter ID: CNXXX11498324163

Account ID: 3266-2505



We have audited your account for the reporting period **01-Jul-2007 through 30-Jun-2009**. As a result, we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	371,638.00	0.00	371,638.00
Late Payment Penalty Increase	148,655.00	0.00	148,655.00
Interest	133,208.31	0.00	133,208.31
Assessment Total	\$653,501.31	\$0.00	\$653,501.31

If you do not agree, you may contest 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 **May 18, 2014**. 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). 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 instead, 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), and file a complaint with the circuit court for a review of our determination.

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.

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.

BUREAU OF AUDITS
 TECHNICAL REVIEW SECTION
 ILLINOIS DEPARTMENT OF REVENUE
 PO BOX 19012
 SPRINGFIELD IL 62794-9012
 217 785-6579

Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 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.
- 2 Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 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.
- 5 Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 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.
- 7 Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed 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. 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.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the day you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

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 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 to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

Notice of Tax Liability
for Form EDA-556, Sales Tax Transaction Audit Report



#BWNKMGV
 #CNXX XX61 2961 5X41#
 NAPERVILLE IMPORTS INC
 MERCEDES-BENZ OF NAPERVILLE
 1569 W OGDEN AVE
 NAPERVILLE IL 60540-3906

March 19, 2014



Letter ID: CNXXXX6129615X41

Account ID: 3266-2505



We have audited your account for the reporting period **01-Jul-2009 through 31-Mar-2010**. As a result, we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	154,461.00	0.00	154,461.00
Late Payment Penalty Increase	31,398.00	0.00	31,398.00
Interest	17,095.37	0.00	17,095.37
Assessment Total	\$202,954.37	\$0.00	\$202,954.37

If you do not agree, you may contest 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 **May 18, 2014**. 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). 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 instead, 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), and file a complaint with the circuit court for a review of our determination.

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.

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.

BUREAU OF AUDITS
 TECHNICAL REVIEW SECTION
 ILLINOIS DEPARTMENT OF REVENUE
 PO BOX 19012
 SPRINGFIELD IL 62794-9012
 217 785-6579

Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 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.
- 2 Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 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.
- 5 Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 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.
- 7 Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed 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. 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.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the day you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

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 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 to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

Notice of Tentative Audit Denial of Claim



#BWNKMGV
#CNXX X162 6287 4566#
NAPERVILLE IMPORTS INC
MERCEDES-BENZ OF NAPERVILLE
1569 W OGDEN AVE
NAPERVILLE IL 60540-3906

March 19, 2014



Letter ID: CNXXX16262874566

Taxpayer ID: 65-1151451
Account ID: 3266-2505
Audit ID: A692607616
Return type: ST-556
Audit periods: 07/2007 - 03/2010



We have audited your claim for credit filed on Form ST-556-X, Amended Sales Tax Transaction Return, described above totaling \$2,350.00 and have denied it because you have failed to respond to our request for supporting documentation.

If you do not agree, you may contest this tentative denial of claim following the instructions listed below.

- If the amount of the tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied 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 **May 18, 2014**. 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). 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 tentative denial of claim 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.

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are below.

Sincerely,

Harvey Anglum
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD, IL 62794-9012

217 785-6489
217 785-3251 fax

Taxpayer Statement



March 19, 2014

TDD 1 800 544-5304



Letter ID: CNXXXX678X4912X6

Account ID: 3266-2505

Total amount due: \$856,455.68

#BWNKMGV
#CNXX XX67 8X49 12X6#
NAPERVILLE IMPORTS INC
MERCEDES-BENZ OF NAPERVILLE
1569 W OGDEN AVE
NAPERVILLE IL 60540-3906



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

ST-556 Sales Tax	You have available credits of \$4,184.00					Account ID: 3266-2505
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	371,638.00	148,655.00	133,208.31	-	-	653,501.31
• \$653,501.31 of this amount is subject to protest.						
31-Mar-2010	154,461.00	31,398.00	17,095.37	-	-	202,954.37
• \$202,954.37 of this amount is subject to protest.						
22-Feb-2014	-	-	-	-	(4,184.00)	(4,184.00)

SOA

Retain this portion for your records.

P-000105

Fold and detach on perforation. Return bottom portion with your payment.

Taxpayer Statement (R-12/08) (136)



Letter ID: CNXXXX678X4912X6
NAPERVILLE IMPORTS INC

Total amount due: \$856,455.68

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19006
SPRINGFIELD IL 62794-9006

\$856,455.68 is subject to protest.

Do not pay any Income Tax liability that you intend to protest.

000 006 000231485120 731 123199 5 0000085645568

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record by messenger delivery before the hour of 5:00p.m. on the 16th day of May, 2014, addressed as follows:

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.