No. 121634

IN THE
SUPREME COURT OF ILLINOIS

CITIBANK, N.A.,	)	On Appeal from an Opinion of the
	)	Appellate Court of Illinois,
Plaintiff-Appellee,	)	First Judicial District, No. 1-13-3650
	)	
v.	)	There Heard on Appeal from an
	)	Order of of the Circuit Court of
ILLINOIS DEPARTMENT OF	)	Cook County, Illinois,
REVENUE; and CONSTANCE	)	No. 13 L 50072
BEARD, Director of the Illinois	)	
Department of Revenue,	)	The Honorable
	)	PATRICK J. SHERLOCK,
Defendants-Appellants.	)	Judge Presiding.

BRIEF AND APPENDIX OF DEFENDANTS-APPELLANTS

LISA MADIGAN
Attorney General
State of Illinois

DAVID L. FRANKLIN
Solicitor General

100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-3312

Attorneys for Defendants-Appellants

CARL J. ELITZ
Assistant Attorney General
100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-2109
Primary e-service:
civilappeals@atg.state.il.us
Secondary e-service:
celitz@atg.state.il.us

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POINTS AND AUTHORITIES

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NATURE OF THE CASE

This appeal concerns the Illinois sales tax and whether the Department of Revenue is authorized to accept refund applications from credit card lenders that finance retail sales. The Department held that credit card lenders are not retailers and so do not have "standing" to file refund claims under section 6 of the Retailers' Occupation Tax Act ("ROTA" or "the Act"), 35 ILCS 120/6 (2016). This is so even though those lenders often go unpaid on some of the retail sales they finance after consumers default on credit card debt.

The circuit and appellate courts reversed the Department. Those courts held that credit card lenders, by accepting "assignments" from their retailers who have statutory rights as taxpayers, should be able to "stand in the shoes" of the retailers. The lower courts believed this was appropriate because it is the lenders that bear the ultimate costs of unpaid sales taxes when sales are financed by defaulting credit card borrowers.

The Department contends that the assignment mechanism endorsed by the lower courts violates section 6 of the Act that allows for the limited recovery of taxes paid by a retailer "in error," as well as this Court's settled holding that it is only the remitter of sales taxes that has standing to seek a tax refund. The Department also contends that newly-enacted section 6d of the Act, 35 ILCS 120/6d (2016), confirms this Illinois public policy by providing that only "retailers" may seek ROTA refunds related to bad debt expenses, and by limiting credit card refunds to retailers who use "private label credit cards."

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ISSUES PRESENTED FOR REVIEW

(1) Whether section 6 of the Act and longstanding principles of Illinois sales tax law prevent a credit card lender from seeking a ROTA tax refund for taxes related to bad debt it claims were paid to the State by its retail merchants "in error."

(2) Whether the public policies that underly section 6d of the Act establish that credit card lenders are not entitled to file refund claims as assignees under section 6 of the ROTA.

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STATEMENT OF FACTS

After the Department issued a tentative denial of Citibank's claim for a ROTA tax refund, R. C51, a Department hearing officer reviewed the matter on stipulated facts and exhibits, R. C37-57. The Director subsequently upheld the denial, R. C105-22, after which Citibank sought administrative review in the circuit court, R. C3-31. The stipulations and exhibits established the following facts.

Stipulated Facts and Exhibits

Citibank provided sales financing to many Illinois retailers. R. C37. As part of their business, the retailers offered customers the option of financing purchases, including the amount of Illinois tax due, on a credit basis. *Id.* Citibank entered into agreements with the retailers that provided that Citibank would originate or acquire consumer charge accounts and receivables from such retailers on a "non-recourse" basis. *Id.* Under those agreements, Citibank acquired all applicable contractual rights relating thereto, including the right to any payments from the customers and the right to claim ROTA refunds or credits. *Id.* When a customer financed a purchase, Citibank remitted to the retailer the amount the customer financed. *Id.* This included some or all of the purchase price, depending on whether the customer financed the entire purchase or only a portion of the purchase, and the amount of the tax that the purchaser owed based on the selling price of the property purchased. *Id.* The retailers then remitted the complementary amount of tax

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owed to the State for each transaction. *Id.*

Some of the customers subsequently defaulted on their Citibank accounts, and it is these defaulted accounts that are the subject of Citibank's claim for a tax refund. R. C37. When the customers defaulted, they did not repay the loan on the full amount of the purchase price and the tax to Citibank, leaving a portion of such amounts unpaid. *Id.*

After reasonable attempts to collect the balances that remained on the defaulted accounts, Citibank determined that they were worthless. *Id*. That is, all of the surrounding circumstances indicated that the debts were uncollectible and that legal action to enforce payment would not result in the satisfaction of execution on a judgment. *Id.* Citibank thus wrote off the remaining balances as worthless on its books and records. R. C37-38. Citibank bore the economic loss on these defaulted accounts. R. C38.

Citibank claimed the remaining unpaid balances on these accounts as bad debts on its federal corporate income tax returns, pursuant to section 166 of the Internal Revenue Code. *Id*. These bad debts were written off over the period of January 1, 2008, to December 31, 2009, and claimed on Citibank's federal corporate income tax returns. *Id.*

On September 28, 2010, Citibank filed a claim with the Department for a refund or credit pursuant to 86 Ill. Admin. Code § 130.1960. R. C38; R. C41-49. The claim was for the period from January 1, 2008, through December 31, 2009, in the amount of $1,600,853.32. *Id.* That amount is the portion of

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account balances that were written off as bad debts that is attributable to the ROTA tax. R. C38. Of this total amount, $640,123 is attributable to the period of January 1, 2008, through December 31, 2008, and $960,731 corresponds to January 1, 2009, through December 31, 2009. *Id.*

The Hearing Officer's Recommended Decision

After Citibank and the Department filed briefs in support of their respective positions, R. C59-91, the hearing officer recommended to the Director that the claim for a ROTA tax refund be denied, R. C106-122, noting that Citibank's refund claim did not contain the detailed information and amounts required to be reported within the different parts of the ROTA refund claim form, R. C108. For example, when identifying the filer's business in Step 1 of the form ST-1-X, the instructions direct the filer to "[w]rite your Illinois account ID . . . as it appears on your original Form ST-1." R. C108-09. Because Citibank is not a retailer, it did not include an Illinois account ID on its claim forms, and instead entered its federal employer identification number. R. C109.

The hearing officer also noted that the ST-1-X instructions direct the retailer/claimant to detail, in Step 4, Column A of the form, all of the financial information that the retailer previously reported on its original ST-1 form for the period. R. C109. Then, in Column B, the claimant is directed to detail the corrections to the financial information it had previously reported. *Id*. On the 2008 claim form, Citibank left blank the lines of Column A in Step 4 that are

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designated for reporting the total receipts and deductions that it would have reported on its original ST-1 form for the same period, had it been a retailer required to file that form. *Id.* It also reported "0" as the amount of its most recently reported taxable receipts for the reporting period. *Id.* In Column B of Step 4, Citibank failed to report a correction to the amount of total receipts for 2008, and reported an additional $8,001,535 in deductions (sales), as a correction of the amount of deductions that would have been reported on its original ST-1 return, had it filed one. *Id.* Based on the increase of deductions reported as a correction, Citibank reported an overpayment of $640,123. *Id.*

The hearing officer also observed that the tax claimed to have been overpaid by Citibank for 2008 is approximately 8% of the amount of the additional deductions reported, although the Illinois ROTA rate was (and remains) 6.25%. R. C109. On the claim form for 2008-2009, Citibank reported entries in Column A virtually identical to the form for 2008. R. C110. In Column B, Citibank reported having a corrected amount of additional deductions totalling $12,009,132, and an overpayment of $960,731. *Id.* The tax Citibank claimed to have overpaid for 2009 is also approximately 8% of the amount of the additional deductions reported. *Id.*

The Department's Decision

On December 13, 2012, the Director adopted the hearing officer's recommended decision to deny a refund. R. C105-122. The Director explained that, since ROTA does not apply to lenders like Citibank, Citibank is not in the

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class of persons that the General Assembly intended to benefit with the special remedy authorized by section 6 of ROTA (citing *Peoples Store of Roseland v. McKibbin*, 379 Ill. 148, 152 (1942)).

The Circuit Court's Reversal

Following administrative review, the circuit court reversed the Department's decision and held that Citibank has standing to seek a refund from the Department. R. C198-211. The court determined that the "key issue" was not whether Citibank was a retailer entitled to a statutory refund under the Department's administrative regulations, but rather, whether it "bore the burden of the tax." R. C206. The court further reasoned that "even if the issue was whether [Citibank] was a retailer, the Retailers [who sold the merchandise on credit] properly assigned all their rights to [Citibank], who therefore stepped into the shoes of the Retailer and is entitled to the refund." *Id.* "Because the legislature did not limit Section 6 of ROTA to retailers," the court held, "the Department's regulation [doing so] cannot limit Section 6 to retailers." R. C206-07. The circuit court based this holding on the assertion that the "general rule is that claims against the government are assignable in the absence of language in the statute prohibiting it . . . ," leading the court to determine that there is "no such prohibition contained in Section 6 or ROTA or [the department's administrative regulations]." R. C209. Accordingly, the court reversed the Department's decision. R. C211.

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The Appellate Court's Affirmance of the Circuit Court's Decision

The Department appealed the circuit court's decision, and the case was fully briefed near the end of 2014. In its opening brief, the Department asserted that only retailers are entitled to seek a tax refund under section 6 of ROTA (and the Department's associated regulations), but pointed out that a bill had been introduced in the General Assembly that would allow the recovery of sales taxes financed by certain "private label credit card" lenders, defined by the proposed law as a lender issuing a card that "carries, refers to, or is branded with the name or logo of a retailer and may only be used to make purchases from that retailer or that retailer's affiliates and franchisees." *See* Senate Bill 3397, 98th Gen. Assembly (Feb. 14, 2014). The Department argued that it has never been authorized to accept refund applications from anyone other than retailers able to show they had not received full payment on a previously taxed retail sale. *See* Department Br. at 14 ("in the absence of remedial legislation, it is only the person with the obligation to remit the original tax (here, the retailer) that may seek a refund from the Department under Section 6. That has been the law in Illinois for at least fifty years.").

The Department also asserted that Citibank's assignment argument, which the circuit court had found persuasive, violated the State's public policy because section 6 was merely remedial legislation intended to relieve the burden put on Illinois retail merchants who paid ROTA tax but who could not subsequently secure full payment, not provide a remedy to their lenders whose

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business is to assess lending risk. *See* Department Br. 14-15.

In affirming the circuit court, the appellate court reiterated the "general rule" that statutory rights can be assigned, endorsing the circuit court's holding that nothing in section 6 precludes Illinois retail merchants from allowing lenders to stand in their shoes when buyers fail to pay for purchased goods: "Assignability is the rule in today's legal world, and nonassignability is the exception." *Citibank N.A. v. Ill. Dep't of Revenue*, 132 IL App (1st) 133650, ¶ 32. The court then analyzed the credit card transactions between Citibank, its retailers, and its cardholders, as if the retailers themselves had experienced a bad-debt loss and then applied for a refund. *Id.*, ¶¶ 33-47. Given the premise that Citibank can "stand in the shoes" of the retailers, the court determined Citibank could seek a ROTA refund under section 6.

Section 6d of the Act

On July 31, 2015, after the case had been fully briefed and taken under advisement by the appellate court, Senate Bill 507 became law. *See* P.A. Act 99-0217 (98th Gen. Assembly) (now codified at 35 ILCS 120/6d (2016)). The new law provides explicitly that a retailer is relieved of liability for ROTA taxes due related to bad debt only when that debt is recorded on the books of the retailer who then takes a federal income-tax deduction pursuant to section 166 of the Internal Revenue Code. 35 ILCS 120/6d(a) (2016). The law makes an exception for debt financed by "private label credit cards" on bad debt occurring on or after January 1, 2016. 35 ILCS 120/6(b) (2016). In such a

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case, the retailer is also relieved of the liability for the tax related to bad debt expense when that expense is recognized on the books of the retailer's private-label credit card lender. *Id.*

In issuing its decision, the appellate court addressed neither the public policy implications of the proposed legislation, nor addressed the subsequently enacted statute that expressly limits claims for bad debt refunds or credits to retailers and private label credit card lenders.

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ARGUMENT

More than fifty years ago, this Court declared that the only person entitled to receive a credit or refund for tax payments made "in error" under what is now section 6 of the Act, 35 ILCS 120/6 (2016), is "the remitter of the tax." *Snyderman v. Isaacs*, 31 Ill. 2d 192, 196 (1964). The lower courts ignored this basic standing requirement of Illinois tax law by holding that a retailer can assign its section 6 rights to a third-party credit card lender. This Court should reverse and reinstate the Department's administrative decision.

The lower courts' decisions should also be reversed because they violate the Illinois public policies regarding assignment embodied in recently enacted section 6d of the Act, 35 ILCS 120/6d (2016). That section recognizes bad-debt refund claims (for payments made "in error," or otherwise) only to Illinois retailers who have recorded the debt on sales on *their own* books, or when such bad debt is recorded on the books of the retailer's *private label* credit card provider. If section 6 rights are assignable, as the lower courts each held, there is nothing preventing credit card lenders who do not meet the requirements of section 6d from "stepping into the shoes" of their retailers and thereby avoid the requirements imposed by section 6d. For this reason, too, this Court should reinstate the Department's decision.

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I. The Standard of Review Is *De Novo*.

The essential question now on review is whether an Illinois retailer may assign its right to seek a tax credit or refund to its credit card lender. This is "a pure question of law," and so review before this Court is *de novo*. *Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 275 (2009). Because this is an administrative review action, it is the decision of the Department, not the judgment of the circuit or appellate courts, that is under consideration. *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 236 Ill. 2d 368, 386 (2010).

Although review is *de novo*, the Department's interpretation of the various sections of the ROTA remain relevant to the analysis. Those interpretations serve this Court as "'an informed source for guidance when seeking to ascertain the legislature's intention when the statute was enacted.'" *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101, 116 (2005), quoting *Johnson v. Marshall Field & Co.*, 57 Ill. 2d 272, 278 (1974); *see Provena*, 236 Ill. 2d at 387, n.9.

II. Background: The Illinois "Sales Tax"

Despite common misconceptions, Illinois does not impose an excise tax on the sale of retail goods. Instead, it assesses taxes on the activities of Illinois retailers and users of goods sold based on their gross retail selling prices.

As this Court has explained, ROTA and the Illinois Use Tax Act ("UTA"), 35 ILCS 105/1 *et seq.* (2016), create a complementary and interlocking tax system that constitutes what is commonly referred to as the

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Illinois "sales tax." *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 362 (2009). ROTA imposes a tax "upon persons engaged in the business of selling at retail tangible personal property," 35 ILCS 120/2 (2016), whereas UTA establishes a tax "upon the privilege of using in this State tangible personal property purchased at retail from a retailer," 35 ILCS 105/3 (2016).

A retailer's tax liability under ROTA is computed as a percentage of "gross receipts," 35 ILCS 120/2-10 (2016), defined as the "total selling price," 35 ILCS 120/1 (2016). The use tax is also determined as a percentage of the "selling price." 35 ILCS 105/3-10 (2016). "The tax rate[s] under ROTA and the Use Tax Act are identical." *Kean*, 235 Ill. 2d at 362; *compare* 35 ILCS 120/2-10 (2016) (setting retailers' occupational tax rate at 6.25% of gross receipts) *with* 35 ILCS 105/3-10 (2016) (setting use tax rate at 6.25% of selling price). "In the usual case, the use tax is collected from the purchaser by the retailer, who must remit the tax to the Department of Revenue." *Kean*, 235 Ill. 2d at 363 (citing 35 ILCS 105/3-45 (2006)).

A retailer, however, is relieved of the duty of remitting the tax it collects if it has paid to the Department the use tax upon the gross receipts from the same sale. 35 ILCS 105/8, 9 (2016); 86 Ill. Admin. Code § 150.130(b). "Thus, although a single sale and purchase at retail of tangible personal property triggers the imposition of two taxes, one on the retailer and one on the purchaser, only one tax is remitted to the Department, and 'the single payment satisfies both taxes.'" *Kean*, 235 Ill. 2d at 363 (quoting *Dep't of*

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Revenue ex rel. People of Ill. v. Steinkopf, 160 Ill. App. 3d 1008, 1014 (1st Dist. 1987)).

The Illinois taxing system means that when an entity sells an item at retail and then remits the tax on the sale to the Department (and provides the customer with a tax receipt), the remittance of tax covers *both* the retailer's occupation tax and the consumer's use tax. The tax is assessed for two separate and independent reasons: (1) ownership of the good sold has been transferred for an agreed-upon price, *i.e.*, there has been a retail "purchase" for a "selling price" triggering a ROTA-tax obligation, 35 ILCS 120/1 (2016); *and* (2) the item sold at retail is for use by the purchaser in Illinois, requiring payment of use tax, 35 ILCS 105/3 (2016).

It does not matter, for purposes of assessing the sales tax, that the "selling price" is based on credit financing, or even that the buyer might fail to meet its debt obligation and pay the seller for the purchased goods. Under ROTA, "[s]elling price" or "amount of sale" means "the consideration for a sale valued in money whether received in money or otherwise, including cash [or] credits," and the statute specifically provides that a seller is not entitled to deductions "on account of the cost of the property sold, the cost of materials used, labor or service cost or *any other expense whatsoever*." 35 ILCS 120/1 (2016) (emphasis added). This necessarily includes any "bad debt" expense that results if the buyer fails to make good on its payment obligations.

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Nonetheless, in recognition of the hardship that can result to retailers, section 6 of the ROTA has been construed by the Department to provide limited relief to Illinois vendors who sell goods on credit and who do not collect the purchase price, yet have remitted proper tax to the Department. That section provides in relevant part:

> If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund *to the person who made the erroneous payment.*

135 ILCS 120/6 (2016) (emphasis added). The Department has never allowed this remedial right to be assigned based on the statutory directive and case law that the Department make payment "to the person who made the erroneous payment." For, as this Court has held, section 6 "is a special remedial statute . . . [whose] general purpose is limited to those who have paid a tax pursuant to the act which, by reason of some mistake of law or fact, they should not have paid." *Peoples Store of Roseland*, 379 Ill. at 152.

III. Citibank Had No Standing to Seek a Refund from the Department Under Section 6 Because It Incurred No Tax and Never Remitted the Tax It Wanted Refunded, and So Was Not "the Person Who Made the Erroneous Payment."

Citibank's claim for a ROTA tax refund was denied by the Department principally because Citibank was not the retailer that incurred ROTA tax, meaning Citibank never remitted the tax it wanted refunded. *See* R. C122.

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Because that determination was correct, the appellate court should have affirmed.

Consistent with the language of section 6 providing that the Department can issue credit memoranda or refunds "to the person who made the erroneous payment," and also to protect state revenue and other taxpayers, Illinois law limits the Department to issuing tax credits or refunds to those taxpayers who actually remitted tax under a legal obligation to do so. *Snyderman,* 31 Ill. 2d at 196; *Jones v. Dep't of Revenue*, 60 Ill. App. 3d 886, 889 (1st Dist. 1978). Citibank did not remit the tax for which it now seeks a refund because it was under no obligation to do so either as a retailer (per the ROTA) or a user (per the UTA). Section 6 therefore required the Department to deny Citibank's claim.

Snyderman, in 1964, established the tax rule that only a remitter of tax has standing to seek a refund from the Department. There, the Department collected tax from a lessor on a car-lease transaction that the lessee (plaintiff Snyderman) claimed had been paid in error. 31 Ill. 2d at 195-96. Snyderman sued to compel the Department to issue him a refund because he alleged he had borne the "burden of the tax" by paying a charge in the amount of the tax the lessor had passed forward onto him at the time of the transaction. He argued that without a refund the Department would be "unjustly enriched" because no tax was actually owed on the lease transaction given the subsequent invalidation of the lease tax by this Court. *Id.* at 196 (citing *Int'l*

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Bus. Machs. Corp. v. Dep't of Revenue, 25 Ill. 2d 503 (1962)). But the circuit court dismissed the action, holding that Snyderman lacked standing to petition the Department for a refund when he had never remitted tax. *Id.*

In affirming dismissal, this Court recognized that there is—in what is now Section 6 of ROTA—statutory authority for the Department to issue refunds when taxes are paid in error, but the court held also that it is not enough for the claimant to have borne the economic burden of an erroneous tax. It is necessary, too, for the claimant to have been the same person obligated to remit the tax to the Department in the first place:

> In these [refund] provisions there is recognition of the possibility that the state may be unjustly enriched through the retention of taxes erroneously paid, and a remedy has been provided. There is recognition also that a refund procedure without safeguards might result in refunds of taxes that had not actually been remitted, or in the unjust enrichment of persons who had not themselves paid the tax, but had passed its burden on to another. To protect the real taxpayer and to prevent unjust enrichment of any other party, the legislature has provided both in the Use Tax Act and in the Retailers' Occupation Tax Act that *the only person entitled to receive credit is the remitter of the tax*.

Id. at 196 (emphasis added). The Court continued:

> In this case the complaint makes it clear that *the lessee-plaintiff did not remit the tax, and such a lessee has no statutory right to recover taxes remitted by his lessor.* That conclusion necessarily makes applicable the general rule that without legislative authorization voluntary tax payments can not be recovered.

*Id. (*emphasis added).

Snyderman establishes that those who are economically downstream

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from a retailer that remits tax to the Department, such as Snyderman (and Citibank here), and who might thereby claim to have "borne the burden" of an erroneously assessed tax, have recourse only against the retailer who actually paid the tax, not against the State. Many Illinois authorities have emphasized this controlling point of law. *See, e.g.*, *Jones*, 60 Ill. App. 3d at 890 ("the Illinois legislature has provided in the ROTA and UTA that the only person entitled to receive a refund or credit is the remitter of the tax"); *Youhas v. Ice*, 56 Ill. 2d 497, 502 (1974) ("in practically all cases the application for refund would have to have been made by the retailers, the remitters of the tax"); *Adams v. Jewel Cos.*, 63 Ill. 2d 336, 341 (1976) (claimants could not "file claims with the Department for refunds because they did not remit the tax and thus lacked standing"); *see also* William J. Woodward, Jr., *"Passing-on" the Right to Restitution*, 39 U. Miami L. Rev. 873, 905 (1985) ("it is unlikely that the customers have any rights against the government because of statutory restrictions," citing *Snyderman*); *accord Int'l Bus. Machs. Corp. v. Korshak*, 34 Ill. 2d 595, 609 (1966) (holding that the limited "refund procedure established by the statutes deprives no one of constitutional rights").

Other courts addressing this issue have overwhelmingly denied recovery of bad-debt credits to assignees in the absence of specific statutory authorization allowing it. *See, e.g.*, *State Dep't of Revenue v. Wells Fargo Fin. Ala., Inc.*, 19 So. 3d 892, 897-900 (Ala. App. 2008); *DaimlerChrysler Servs. N. Am. LLC v. Ariz. Dep't of Revenue*, 110 P.3d 1031, 1037-40 (Ariz. Ct. App.

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2005); *Citifinancial Retail Servs. Div. of Citicorp Trust Bank FSB v. Weiss*, 271 S.W.3d 494, 497-98 (Ark. 2008); *DaimlerChrysler Servs. N. Am. LLC v. Comm'r of Revenue Servs.*, 875 A.2d 28, 36-40 (Conn. 2005); *Fla. Dep't of Revenue v. Bank of Am.*, 752 So. 2d 637, 642-44 (Fla. Dist. Ct. App. 2000); *Citibank (S. Dakota), N.A. v. Graham*, 726 S.E.2d 617, 618-19 (Ga. Ct. App. 2012); *In the Matter of the Appeal of Ford Motor Credit Co.*, 69 P.3d 612, 621 (Kan. 2003); *Suntrust Bank v. Johnson*, 46 S.W.3d 216, 226 (Tenn. App. 2001); *Citibank (South Dakota), N.A. v. Dep't of Taxes*, 149 A.3d 149, 154-57 (Vt. 2016).

Even courts addressing statutory schemes that recognize the possibility of credit assignments (unlike the ROTA) have denied that right when it relates to bad-debt refunds. *See, e.g.*, *Conseco Fin. Corp. v. Ky. Revenue Cabinet*, No. 2004-CA-001838-MR, 2005 WL 3116101, at *2 (Ky. Ct. App. Nov. 23, 2005) (unpublished); *Daimler Chrysler Servs. of N. Am., LLC v. Dep't of Revenue*, 970 So. 2d 616, 620-21 (La. App. 2007); *Household Retail Servs., Inc. v. Comm'r of Revenue*, 859 N.E.2d 837, 842 (Mass. 2007); *DaimlerChrysler Servs. N. Am., LLC v. State Tax Assessor*, 817 A.2d 862, 865-67 (Me. 2003); *Menard, Inc. v. Dep't of Treasury*, 838 N.W.2d 736, 745-46 (Mich. Ct. App. 2013); *Dep't of Taxation v. Daimler Chrysler Servs. N. Am., LLC*, 119 P.3d 135, 139 (Nev. 2005); *Gen. Elec. Capital Corp. v. N.Y. Tax Appeals Tribunal*, 810 N.E.2d 864, 867-71 (N.Y. 2004); *Chrysler Fin. Co. v. Wilkens*, 812 N.E.2d 948, 951-52 (Ohio 2004); *MFC Fin. Co. v. Strayhorn*, No. 03-06-00328-CV, 2008 WL 1912265,

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*2-4 (Tex. App. May 1, 2008).

Contrary decisions that allow such assignments exist, but they are sparse. *Chrysler Fin. Co., L.L.C. v. Ind. Dep't of State Revenue*, 761 N.E.2d 909, 911-13 (Ind. T.C. 2002); *Puget Sound Nat'l Bank v. State Dep't of Revenue*, 868 P.2d 127, 130-32 (Wash. 1994).

As this Court explained in *Snyderman*, 31 Ill. 2d at 196, the General Assembly could act to amend what is now section 6 to allow third parties such as Citibank to bring refund claims to the Department. *Youhas* recognized, for example, precisely that sort of legislation. 56 Ill. 2d at 497. There, the General Assembly passed a provision allowing automobile purchasers the right to seek a direct "tax refund" from the Department for a charge that automobile dealerships passed onto them, even though it was the dealerships that had incurred the actual tax liability and had remitted the funds to the State. *Id.* at 501. Relevant to the public policy question regarding assignability, and as discussed in Part IV below, the General Assembly also recently authorized ROTA relief for retailers who use "private label credit cards" to finance a sale resulting in bad-debt expense. 35 ILCS 120/6d (2016). But Citibank was not a private label credit card lender, and the debt at issue was charged off well before the January 1, 2016, statutory start date for the Department to recognize ROTA bad-debt refund claims. *See* 35 ILCS 120/6d(b)(1)(A) (2016).

Snyderman observed that a refund procedure without standing safeguards can potentially result in refunds of taxes that had not actually been

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remitted, or in the unjust enrichment of persons who had not themselves paid the tax, but who had "passed its burden on to another." 31 Ill. 2d at 196. In this case, for example, the retailers have given Citibank's customers receipts that show accurately that they paid the full amount of the use tax due (via Citibank's extension of credit). But Citibank's refund request provided nearly no information about the underlying transactions for which credits or refunds were sought. R. C109-110. In the absence of this documentation, the Department correctly recognized the risk that it could mistakenly issue an undeserved credit refund. After all, the Department has no relationship with lenders, and so cannot check the claimant's tax history or confirm the underlying circumstances before issuing payment.

Further, nothing in the parties' stipulations suggest that Citibank provided its financing services for free to its merchants and credit card holders. *See* R. C37-57. Merchants are typically required to discount their reimbursement requests by several percentage points to secure "non-recourse" financing from banks, and purchasers often incur card-holder fees, and/or pay interest on outstanding debt. These vendor discounts, card-holder charges, and interest payments serve to compensate finance companies for the "bad debt risk" they face in facilitating consumer transactions, including the retail costs incurred that relate to the purchaser's use tax obligation. And so these revenue streams have the effect of passing the tax burden Citibank asserts it

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has borne "on to another," *Snyderman*, 31 Ill. 2d at 196, *i.e.*, the pool of merchants and non-defaulting consumers with whom Citibank profitably deals.

Illinois taxpayers should not have to subsidize through lost tax revenue bad debt expense that is already part of a credit card lender's business model. Where lenders are able to generate revenue on loaned funds, it is unfair to allow them to *also* collect tax refunds for their bad expense, and so there are sound public policy reasons, too, for disallowing the assignment of tax refund claims.

The appellate court relied substantially on the reasoning of *People ex rel. Stone v. Nudelman*, 376 Ill. 535, 538 (1940), concluding that because credit memoranda issued by the Department are assignable to third parties, so too should tax refund claims under section 6. 2016 IL App (1st) 133650, ¶ 36. *Nudelman*, however, is distinguishable. That case turned on the notion that when the Department issues a credit memoranda it is essentially creating an "asset," that should be transferrable like any other asset. *Nudelman*, 376 Ill. at 538 (memorandum assignable because it was "an asset belonging to the assigning company"). The public policy concerns subsequently addressed by this Court in *Snyderman*, 31 Ill. 2d at 195-96, much more closely align with the current facts. Thus, unlike credit memoranda, refund claims should not be treated as assignable.

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In sum, absent remedial legislation, it is only the person with the obligation to remit the original tax (here, the retailer) that may seek a refund from the Department under section 6 by claiming that taxes have been paid "in error." This is a basic limitation on the assignability of Illinois tax refund claims, and a public policy designed to protect the State's revenue. It has been the law in Illinois for at least fifty years. *See Snyderman*, 31 Ill. 2d at 196. The appellate court's decision was therefore erroneous because the stipulated facts show that Citibank neither incurred nor remitted ROTA tax on the transactions for which it sought a refund. Accordingly, the lower court decisions should be reversed, and the Department's decision reinstated.

IV. The Public Policies Underlying Section 6d Establish that Credit Card Lenders Are Not Entitled to File Refund Claims Under Section 6.

Finally, the lower courts' determinations that a credit card lender like Citibank can obtain a "refund" of taxes paid by its retail merchants undermines the premise of section 6d. 35 ILCS 120/6d (2016). The Department's decision should be reinstated for that reason as well.

Although the ability of a person to assign rights, including statutory rights, is now widely accepted in the law, assignability is still limited by public policy considerations, or by operation of law. *Amalgamated Transit Worker's Union v. Pace Suburban Bus Div. of Reg'l Transp. Auth.*, 407 Ill. App. 3d 55, 60 (1st Dist. 2011). Both limitations apply. As explained above, the assignment by the retail merchants to Citibank of their right to a ROTA

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refund violates section 6 and the public policies discussed in *Snyderman* that give meaning to the statutory requirement that refunds and credits be provided only "to the person who made the erroneous payment," 135 ILCS 120/6 (2016). Here, it was the retailers that paid the tax; accordingly, as argued above, section 6 contemplates that only the retailers have standing to seek a refund.

Citibank's arguments should also be rejected because they amount to an end-run around the legislative objectives of section 6d of the Act. 35 ILCS 120/6d (2016). That provision sets out the requirements for an Illinois ROTA taxpayer to obtain a refund or credit from the Department for its bad debt expense. *Id.* It provides that the "retailer" is relieved of the obligation to pay tax and may receive a credit or refund only in certain enumerated circumstances. *Id.* The Department is limited to providing bad-debt refunds or credits to the circumstance of when a charge-off has occurred after January 1, 2016, and either the *retailer* (1) incurs the bad debt on *its* books, 35 ILCS 120/6d(a) (2016), or (2) shows that a private-label credit card provider incurred such bad debt expense on the lender's books, 35 ILCS 120/6d(b) (2016).

Inherent in the new legislation is a recognition that retailers and credit card lenders are not usually in sufficient privity with one another to allow the Department to issue ROTA refunds to the lenders. Not only does the new legislation, consistent with this Court's holding in *Snyderman*, provide that only a "retailer" is relieved from liability for taxes collected relating to bad

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debt, it also requires that the debt be recorded in a certain way: either on the lender's own books or on the books of the lender's "private label credit card." 35 ILCS 120/6d(a), (b) (2016). A consumer's use of such a card ties the financing of the sale uniquely to the retailer. Under the new provision, a private label credit card is "a charge card or credit card that carries, refers to, or is branded with the name or logo of a retailer and may only be used to make purchases from that retailer or that retailer's affiliates." 35 ILCS 120/6d(c) (2016).

The appellate court held that retailers have common law rights to assign a refund claim under section 6 to *anyone* who has borne the burden of a ROTA tax, without limitation. 2016 IL App (1st) 133650, ¶ 36. But the recent legislation shows the General Assembly anticipates more from a ROTA-refund claimant, consistent with *Snyderman* and the Department's longstanding view that only taxpayers may seek tax refunds.

Statutory provisions should be read in concert and harmonized. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 25. Here, the provisions of section 6a make sense only if section 6 refund claims are non-assignable. The new legislation liberalizes a retailer's refund opportunities by allowing retailers a bad debt credit even for some credit card transactions, but the new law requires that the bad debt on which a refund is sought remain tied to the retailer by having been charged off on a branded and exclusive "private label credit card." 35 ILCS 120/6d(b), (c)(3) (2016). Section 6a does not admit the

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possibility, as the lower courts each held, that a section 6 refund claim can be assigned to a retailer's credit card provider without limitation. 2016 IL App (1st) 133650, ¶ 36. Thus, section 6a confirms, consistent with the longstanding Illinois law set out in Part III above, that section 6 refund claims are not assignable.

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CONCLUSION

For the above reasons, the Illinois Department of Revenue requests that this Court reverse the decisions of the lower courts, and affirm the decision of the Department.

July 12, 2017

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

DAVID L. FRANKLIN
Solicitor General

100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-3312

Attorneys for Defendants-Appellants

CARL J. ELITZ[*]
Assistant Attorney General
100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-2109
Primary e-service:
civilappeals@atg.state.il.us
Secondary e-service:
celitz@atg.state.il.us

[*] Paulson Varghese, a rising third-year law student serving as the Summer 2017 law clerk in the Civil Appeals Division of the Office of the Attorney General of Illinois, assisted in the preparation of this brief.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 315(d) and Rule 341(a). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 27 pages.

/s/ Carl J. Elitz
CARL J. ELITZ
Assistant Attorney General
100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-2109
Primary e-service:
civilappeals@atg.state.il.us
Secondary e-service:
celitz@atg.state.il.us

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APPENDIX

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SUPREME COURT CLERK

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Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
James R. Thompson Center
100 West Randolph Street, Level 7-900
Chicago, Illinois 60601
(312) 814-6114

CITICORP TRUST BANK, FSB,	Docket No.	~~11-ST-0141~~
Taxpayer	Claim Periods	1/08 — 12/09
v.		
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS,		

NOTICE OF DECISION

TO:

Fred Marcus
Horwood Marcus & Berk, Chartered
500 West Madison Street Suite 3700
Chicago, Illinois 60661

John Alshuler
Illinois Department of Revenue
100 West Randolph Street 7th Floor
Chicago, Illinois 60601

Peter Larsen
Akerman Senterfitt
50 North Laura Street Suite 2500
Jacksonville, Florida 32202

YOU ARE HEREBY NOTIFIED that the attached recommended decision of the Office of Administrative Hearings of the Illinois Department of Revenue in the above entitled cause has been accepted by the Director as dispositive of the issues therein. This *recommendation is now a final administrative decision and establishes your rights or* responsibilities regarding the subject matter of the hearing. Should this decision be adverse to you, you may pursue your rights to administrative review by filing a complaint in the Circuit Court under the requirements of 735 ILCS 5/3-101 *et seq.*, within 35 days of the date of service of this notice. **PLEASE NOTE**: Should you chose not to pursue your right to seek remedy in court as provided by law, any tax remaining due (excluding interest) as a result of the administrative decision herein must be paid within 65 days following the date of mailing of this notice in order to avoid imposition of further penalties under the provisions of 35 ILCS 735/3-3(b)(2).

12-13-12
Date of Decision

Brian A. Hamer, Director
Illinois Department of Revenue

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STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

CITICORP TRUST BANK, FSB,	)	Docket No.	11-ST-0141
Taxpayer	)	Claim Periods	1/08 — 12/09
v.	)		
THE DEPARTMENT OF REVENUE	)	John E. White,	
OF THE STATE OF ILLINOIS,	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Peter Larsen, Akerman Senterfitt, and Fred Marcus, Horwood Marcus & Berk, Chartered, appeared for Citicorp Trust Bank, FSB; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

The matter involves the Illinois Department of Revenue's (Department) denial of amended returns that Citicorp Trust Bank, FSB (Citi) filed to claim a refund of retailers' occupation tax (ROT) that was related to bad debts that Citi wrote off on its federal income tax returns during January 2008 through December 2009.

In lieu of hearing, the parties submitted a Stipulation of Facts (Stip.) and exhibits. The issue is whether Citi is entitled to a refund of tax that is equal to a portion of the ROT remitted to the Department by retailers from whom certain of Citi's credit account customers made retail purchases of tangible personal property, and which accounts were later written off by Citi as bad debts. I am including in this recommendation findings of fact and conclusions of law. I recommend the denial be finalized as issued.

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Stipulations and Findings of Fact:

1. Citi provided sales financing programs to numerous retailers (Retailers) in the State of Illinois. Stip. ¶ 2.
2. As part of their normal business, the Retailers offered their customers the option of financing their purchases, including the amount of Illinois tax due on such purchases, on a credit basis. Stip. ¶ 2.
3. Citi entered into agreements (Agreements) with Illinois Retailers which provided that Citi would originate or acquire consumer charge accounts and receivables from such Retailers on a non-recourse basis. Stip. ¶ 2. Under those Agreements, Citi acquired any or all applicable contractual rights relating thereto, including the right to any and all payments from the customers and the right to claim Retailer's Occupation Tax (ROT) refunds or credits. *See id.*
4. Under the Agreements, when a customer financed a purchase using the consumer's account, Citi remitted to the Retailer the amount that the customer financed. Stip. ¶ 3. This included some or all of the purchase price, depending on whether the customer financed the entire purchase or only a portion of the purchase, and the amount of the tax that the purchaser owed based on the selling price of the property purchased. *See id.* The Retailers then remitted the complementary amount of ROT they owed to the State for each transaction. *See id.*
5. Some of the customers subsequently defaulted on their accounts (Accounts), and it is these defaulted Accounts that are the subject of Citi's claim in this case. Stip. ¶ 4. When the customers defaulted on the Accounts, they did not repay the full amount of the purchase price and the ROT, and a portion of such amounts remains unpaid. *Id.*
6. After reasonable attempts to collect the balances that remained on the defaulted Accounts, Citi determined that they were worthless. Stip. ¶ 5. That is, all of the surrounding circumstances indicated that the debts were uncollectible and that legal action to enforce payment would not result in the satisfaction of execution on a

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judgment. *Id.* Citi then wrote the remaining balances off as worthless on its books and records. *Id.* Citi, and not the Retailers, bore the economic loss on these defaulted accounts. *Id.*

7. Citi claimed the remaining, unpaid, balances on these Accounts as bad debts, pursuant to § 166 of the Internal Revenue Code (Code), on its United States (U.S.) corporate income tax returns. Stip. ¶ 6. These bad debts were written off over the period of January 1, 2008 to December 31, 2009, and claimed on Citi's U.S. corporate income tax returns covering this period. *Id.*

8. On September 28, 2010, Citi filed a claim for a refund or credit (Claim) pursuant to 86 Ill. Admin. Code § 130.1960. Stip. ¶ 7; Stip. Ex. A (copy of Claim forms and attachments). The Claim was for the period from January 1, 2008 through December 31, 2009, in the amount of $1,600,853.32. Stip. ¶¶ 1, 7; Stip. Ex. A. That amount is the portion of Account balances that were written off as bad debts that is attributable to the ROT. Stip. ¶ 7. Of this total amount, $640,123 is attributable to the period of January 1, 2008 through December 31, 2008, and $960,731 is attributable to the period of January 1, 2009 through December 31, 2009. *Id.*

9. The Department denied Citi's Claim on January 31, 2011 (Stip. ¶ 8; Stip. Ex. B (copy of Notice of Tentative Denial of Claim (Denial)), following which Citi protested that Denial, and asked for an administrative hearing. Stip. ¶ 9; Stip. Ex. C (copy of Citi's protest).

10. Citi's Claim does not contain the detailed information and amounts required to be reported within the different parts of the form. *Compare* Stip. Ex. A *with* 35 ILCS 120/6a *and* ST-1-X Instructions (a .pdf copy of which is viewable at the Department's web site, http://tax.illinois.gov/taxforms/Sales/ST-1-X-Instr-2011.pdf) (last viewed *on December 5, 2012*).

11. *For example, when identifying the filer's business in Step 1 of the form ST-1-X, the ST-1-X Instructions directs the filer to "Write your Illinois account ID (previously*

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known as your Illinois business tax (IBT) number) as it appears on your original Form ST-1." Because Citi did not engage in the occupation of retailing (*see* Stip. ¶ 2), it did include such an account number on its Claim forms, and instead entered its federal employer identification number in Step 1 of each Claim form. Stip. Ex. A, pp. 1, 3.

12. The ST-1-X Instructions directs the retailer/claimant to detail, in Step 4, Column A of the form, *all of the financial information that the retailer previously reported on its* original ST-1 form for the period, and then, in Column B, to detail any and all corrections that it is making to the financial information it previously reported. ST-1-X Instructions, p. 2 (http://tax.illinois.gov/taxforms/Sales/ST-1-X-Instr-2011.pdf) (last viewed on December 5, 2012).

13. *On the Claim form Citi filed for the period of January 1, 2008 through December 31,* 2008, in Step 4, it left blank the lines of Column A that are designated for reporting the total receipts and deductions that Citi would have reported on its original ST-1 form for the same period, had it filed one. Stip. Ex. A, p. 2 (Column A, lines 1-2). It reported 0 as the amount of its most recently reported taxable receipts for the reporting period. Stip. Ex. A, p. 2 (Column A, line 3). In Column B of Step 4, Citi left blank the line designated to report a correction to the amount of total receipts for 2008, and reported an additional $8,001,535 in deductions, as a correction of the amount of deductions that would have been reported on its original ST-1 return, had it filed one. *Stip. Ex. A, p. 2 (Columns A-B, lines 1-3).* Based on the increase of deductions reported as a correction, Citi reported an overpayment of $640,123. *Id.*, p. 2 (Column B, line 27).

14. The tax claimed to have been overpaid by Citi for 2008 is approximately 8% of the amount of the additional deductions reported (*see id.* (640,123/8,001,535 ≈ 0.0800000249)), while the Illinois ROT rate was (and remains) 6.25%. 35 ILCS 120/2-10 (ROTA § titled, Rate of tax).

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15. On the Claim form it filed for the period of January 1, 2009 through December 31, 2009, Citi reported virtually identical entries in Column A as it had on the Claim for 2008. Stip. Ex. A, pp. 2, 4. Under Column B, Citi reported having a corrected amount of additional deductions in the amount of $12,009,132, and an overpayment of $960,731. *Id.*, p. 4 (Column B, lines 2-3, 27). The tax claimed to have been overpaid by Citi for 2009 is approximately 8% of the amount of the additional deductions reported. *Id.* (960,731/12,009,132 ≈ 0.0800000366); *but see* 35 ILCS 120/2-10.

Conclusions of Law:

Section 6b of the ROTA provides that the Department's denial of a taxpayer's claim for credit constitutes prima facie proof that the taxpayer is not entitled to a credit. 35 ILCS 120/6b. The Department's prima facie case is a rebuttable presumption. The presumption is overcome, and the burden shifts back to the Department to prove its case, only after a taxpayer presents evidence that is consistent, probable and identified with its books and records, to show that the Department's determinations are wrong. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 156-57, 242 N.E.2d 205, 206-07 (1968); A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 832, 527 N.E.2d 1048, 1052 (1st Dist. 1988).

Citi argues that it is entitled to a refund pursuant to ROT regulation (ROTR) § 130.1960. Citicorp Trust Bank's Opening Brief (Taxpayer's Brief), *passim*; 86 Ill. Admin. Code § 130.1960(d). The applicable ROTR provides, in pertinent part:

> *Section 130.1960 Finance Companies and Other Lending Agencies* -- Installment Contracts -- Bad Debts
>
> ***
>
> d) Bad Debts
>
> 1) In case a retailer repossesses any tangible personal property and subsequently resells such property to a purchaser for use or consumption, his gross receipts from such sale of the repossessed

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tangible personal property are subject to Retailers' Occupation Tax. He is entitled to a bad debt credit with respect to the original sale in which the default has occurred to the extent to which he has paid Retailers' Occupation Tax on a portion of the price which he does not collect, or *which he is not permitted to retain because of being required to make a* repayment thereof to a lending agency under a "with recourse" agreement. *Retailers of tangible personal property other than motor* vehicles, watercraft, trailers and aircraft that must be registered with an agency of this State may obtain this bad debt credit by taking a deduction on the returns they file with the Department for the month in which the federal income tax return or amended return on which the receivable is written off is filed, or by filing a claim for credit as provided in subsection (d)(3) of this Section. Because retailers of motor vehicles, watercraft, trailers and aircraft do not pay Retailers' Occupation Tax to the Department on retail sales of motor vehicles, *watercraft, trailers, and aircraft with monthly returns, but remit the tax to* the Department on a transaction by transaction basis, they are unable to *take a deduction on the returns that they file with the Department, but* may file a claim for credit with the Department, as provided in subsection (d)(3), on any transaction with respect to which they desire to receive the benefit of the repossession credit.

2) Retailers who incur bad debt on any tangible personal property that is not repossessed may also obtain bad debt credit as provided in subsections (d)(1) and (3).

3) In the case of tax paid on an account receivable that becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for *credit may be filed in accordance with Section 6 of the Retailers'* Occupation Tax Act, on the date that the Federal income tax return or *amended return on which the receivable is written off is filed.*

86 Ill. Admin. Code § 130.1960 (2000); 24 Ill. Reg. 18376 (eff. December 1, 2000).

Citi argues that the bad debt regulation allows a retailer to claim a refund or deduction where (1) ROT was remitted on the sale and (2) the account is written off as uncollectible for federal tax purposes. Taxpayer's Brief, p. 6. Citi claims that it meets each requirement because it is undisputed that ROT was remitted to the State of Illinois on each of the sales that relate to the Accounts, and it is also undisputed that Citi wrote off its bad debt Accounts on its federal income tax returns and on its books and records. *Id.*; Stip. ¶¶ 3, 5-6. The Department responds that Citi is not entitled to a credit under ROTR § 130.1960(d) because it is not a retailer, and because none of the Retailers with

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whom Citi entered into agreements would have been entitled to a refund for a bad debt deduction under the express text of ROTR § 130.1960(d). Department's Response Brief, pp. 5-8.

I agree with the Department that ROTR § 130.1960(d) does not authorize a refund to be paid to Citi, given the facts of record. That conclusion is based on the plain text of ROTR § 130.1960(d), read together with the scheme the Illinois General Assembly created to provide a statutory remedy for retailers who, through a mistake of fact or law, have overpaid the amount of tax due to the State. That statutory scheme begins with § 6 of the ROTA, which provides, in pertinent part:

> § 6. Credit memorandum or refund. If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person died or became a person under legal disability, to his or her legal representative, as such. ... Claims submitted by the retailer are subject to the same restrictions and procedures provided for in this Act. ***
>
> *** No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears (a) that the claimant bore the burden of such amount and has not been relieved thereof nor reimbursed therefor and has not shifted such burden directly or indirectly through inclusion of such amount in the price of the tangible personal property sold by him or her or in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he or she or his or her legal representative may be relieved of the burden of such amount, be reimbursed therefor or may shift the burden thereof; or (b) that he or she or his or her legal representative has repaid unconditionally such amount to his or her vendee (1) who bore the burden thereof and has not shifted such burden directly or indirectly, in any manner whatsoever; (2) who, if he or she has shifted such burden, has repaid unconditionally such amount to his own vendee; and (3) who is not entitled to receive any reimbursement therefor from any other source than from his or her vendor, nor to be relieved of such burden in any manner whatsoever. No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser and

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> retained by the claimant with respect to the same transaction under the Use Tax Act.
>
> ***

35 ILCS 120/6.

Section 6 of the ROTA "is a special remedial statute. Its general purpose is limited to those who have paid a tax pursuant to the act which, by reason of some mistake of law or fact, they should not have paid." Peoples Store of Roseland v. McKibben, 379 Ill. 148, 152, 39 N.E.2d 995, 998 (1942). More to the point, ROTA § 6 makes clear that *the reason why retailers are entitled to a refund of tax they should not have paid is* because tax, or some portion of it, was not due in the first place. 35 ILCS 120/6 ("If it appears ... that an amount of tax or penalty or interest has been paid *which was not due under this Act*, whether as the result of a mistake of fact or an error of law, ...") (emphasis added). Here, Citi has wholly failed to show that any of the ROT that the Retailers remitted to the Department was not due. *See* Stip. *passim*; 35 ILCS 105/3-45.[1]

Next, the stipulated record shows that Citi never bore the burden of the tax that is imposed by the ROTA. Retailers' occupation tax is imposed upon persons engaged in the occupation of selling tangible personal property, at retail, to purchasers for use or consumption in Illinois. 35 ILCS 120/2; Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351, 362, 919 N.E.2d 926, 932 (2009). Citi is not a retailer, and has never claimed that it is a

---

[1] Section 3-45 of the UTA provides, in part:

> ***
>
> If a seller collects use tax measured by receipts that are not subject to use tax, or if a seller, in collecting use tax measured by receipts that are subject to tax under this Act, collects more from the purchaser than the required amount of the use tax on the transaction, the purchaser shall have a legal right to *claim a refund of that amount from the seller. If, however, that amount is not* refunded to the purchaser for any reason, the seller is liable to pay that amount to the Department.

35 ILCS 105/3-45.

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retailer. *See* Stip. ¶ 2. Rather than engaging in the occupation that is taxed by the ROTA, Citi engaged in the occupation of extending credit to persons who then purchased property at retail for use in Illinois, using the credit that Citi agreed to extend to each such purchaser. Stip. ¶ 2 (Citi "provided sales finance programs to numerous retailers in ... Illinois." and "entered into agreements ("the Agreements") that provided that [Citi] will originate or acquire consumer charge accounts and receivables from such retailers on a non-recourse basis."). Since the ROTA does not apply to Citi, Citi is not within the class *of persons to whom the legislature intended to provide the special remedy authorized by* ROTA § 6. 35 ILCS 120/6; Peoples Store of Roseland, 379 Ill. at 152, 39 N.E.2d at 998.

Further, and as a natural result of Citi not being engaged in the occupation that is taxed pursuant to the ROTA, Citi never remitted any amounts of tax that is imposed by *the ROTA to the Department. Stip. ¶ 3 ("The retailers then remitted the [ROT] to the* State for each transaction."). That explains why Citi either left most of the lines in Step 4, Column A, of its Claim forms blank, or entered "0" on such lines. Stip. Ex. A, pp. 2-4. Since it was not a retailer, it did not file any original returns to report the gross receipts it realized from selling property at retail. *See* Stip. ¶¶ 2-3; Stip. Ex. A, pp. 2, 4. As the stipulations in this matter reflect, the actual Retailers from whom Citi's cardholders purchased property are the persons that collected use tax, plus the selling price for such property, from the purchasers. *See* Stip. ¶¶ 2-3. Then each Retailer remitted *its* respective, *and corresponding, amount of ROT liability to the Department. Stip. ¶ 3. Citi extended* credit to persons who used that credit to purchase goods at retail, but that does not make Citi a Retailer. Since Citi never remitted any ROT to the Department, it cannot have paid

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any such tax in error. Citi, therefore, is not entitled to any refund expressly authorized by ROTA § 6. 35 ILCS 120/6; Peoples Store of Roseland, 379 Ill. at 152, 39 N.E.2d at 998.

I move now to whether Citi is entitled to a refund under the plain text of ROTR § 130.1960(d). Although Citi argues that it satisfies all the requirements of the regulation (Taxpayer's Brief, p. 6), it fails to meet the most important requirement — that the person claiming the refund be the retailer who remitted ROT in the first place. 86 Ill. Admin. Code § 130.1960(d)(2). Specifically, ROTR § 130.1960(d)(2) expressly provides that "Retailers who incur bad debt on any tangible personal property that is not repossessed may also obtain bad debt credit as provided in subsections (d)(1) and (3)." *Id.* While the parties stipulate that Citi incurred bad debts because some credit card holders did not pay all they owed to Citi regarding their respective Accounts (Stip. ¶¶ 4-6), Citi is not a retailer. Stip. ¶¶ 2-3. Because Citi is not a retailer, it is not entitled to a credit "as provided in subsections (d)(1) and (3)" of ROTR § 130.1960(d). 86 Ill. Admin. Code § 130.1960(d)(2).

Citi also asserts that it is "entitled to a refund under the Bad Debt Regulation, because it is the assignee of the rights of the [R]etailers who made the sales to seek refunds under the Bad Debt Regulation." Taxpayer's Brief, p. 6. Citi argues that such Retailers "would have been entitled to a refund or deduction under the Bad Debt Regulation if they had not assigned their rights to [Citi]. *Id.*, pp. 6-7. But all of the *Retailers here collected use tax from the purchasers who obtained credit from Citi. See* Stip. ¶¶ 2-3. As a matter of law then, the Retailers here would have been entitled to a refund only if they first unconditionally repaid to their customers the use tax they had previously collected from them. 35 ILCS 120/6 ("No credit may be allowed or refund

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made for any amount paid by or collected from any claimant unless it appears that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser and retained by the claimant with respect to the same transaction under the Use Tax Act."); Stip. Ex. A, pp. 1, 3.

Moreover, Citi's argument that Illinois law recognizes a broad right to assign claims against the government (Taxpayer's Brief, pp. 7-9), is misplaced. Citi's argument suggests that, but for the Retailers' assignments to Citi, the Retailers here would have been entitled to a refund of some portion of the ROT that each Retailer remitted to the State. *Id.* But whether any of the Retailers here — or any retailer, generally — has a right to a refund of ROT overpaid in error depends upon the text of ROTA § 6 and other related statutory and regulatory provisions. Under the applicable regulation, the only way the Retailers would have been entitled to a bad debt credit was if the customers' defaults caused *the Retailers* to incur a bad debt. 86 Ill. Admin. Code § 130.1960(d). The regulation expresses two ways such a bad debt might occur.

First, the Retailers here would have been entitled to a bad debt credit had they *been the ones that extended financing to their customers, and had the customers'* subsequent defaults thereby actually caused the Retailers to be unable to collect all of the selling price of the goods sold. 86 Ill. Admin. Code § 130.1960(d)(1) ("[The retailer] is entitled to a bad debt credit with respect to the original sale in which the default has occurred to the extent to which he has paid Retailers' Occupation Tax on a portion of the price which he does not collect ...."). But the Retailers did not finance their retail sales; Citi did. Stip. ¶¶ 2-3. The Retailers, moreover, collected the selling price, plus whatever *use tax was due, from the purchasers. Stip.* ¶ 3.

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Alternatively, the Retailers would have been entitled to a bad debt credit if the assignments to Citi were "with recourse." *86 Ill. Admin. Code § 130.1960(d)(1)* ("[The retailer] is entitled to a bad debt credit with respect to the original sale in which the *default has occurred to the extent to which he has paid Retailers' Occupation Tax on a* portion of the price which ... he is not permitted to retain because of being required to *make a repayment thereof to a lending agency under a 'with recourse' agreement.*"). *The* terms, "with recourse" and "without recourse" are terms of art in commercial law. *See, e.g.,* Ford Motor Credit Co. v. Cenance, 452 U.S. 155, 155-56, 101 S.Ct. 2239, 2239-40, 68 L.Ed.2d 744 (1981) (describing the practice of dealers assigning retail installment contracts, without recourse, to Ford Motor Credit Co. (FMCC), the person that financed the dealers' sales of motor vehicles). Cenance involved the question of whether motor vehicle dealers who assigned their retail installment contracts "without recourse" to FMCC, *gave sufficient notice to the motor vehicle purchasers that FMCC was acting a* creditor, as creditor is defined in the Truth in Lending Act. Cenance, 452 U.S. at 155-57, 101 S.Ct. at 2239-40, 68 L.Ed.2d 744. For purposes of this case, Cenance is cited because of the Court's determination that the dealer's assignment to FMCC without recourse "divested the dealer of any risk in the transaction." *Id.* at 158, 101 S.Ct. at 2241, 68 *L.Ed.2d 744. Just so here.*

Citi has stipulated that its Agreements with the Retailers were "on a non-recourse *basis." Stip. ¶ 2. Thus, after the Retailers assigned their rights under the Accounts to Citi* on a non-recourse basis, the Retailers no longer had any risk of incurring a bad debt from *a customer's failure to pay all of the amounts it owed to Citi. Cenance, 452 U.S. at 158,* 101 S.Ct. at 2241, 68 L.Ed.2d 744. Since no Retailer would have been "required to make

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a repayment ... to a lending agency under a 'with recourse' agreement[,]" no Retailer here would have been entitled to claim a credit pursuant to 86 Ill. Admin. Code § 130.1960(d)(1).

Finally, even if Citi were, itself, one of the Retailers in the transactions for which it claims a credit, this stipulated record does not contain evidence which shows that it is entitled to a credit or refund in the amount claimed. That is because Citi has wholly failed to submit the detailed information required to be included on a Claim form. Stip. Ex. A; 35 ILCS 120/6a. The Claim forms that Citi filed with the Department require the retailer to report detailed financial information to show that a credit is due, and in the amount claimed. Stip. Ex. A. The Claim form is divided into five numbered steps, and each requires the retailer to provide different information. *See id.* Step 1 asks the clamant to "Identify your business[;]" Step 2 asks the claimant to "Mark the reason why you are filing an amended return[;]" Step 3 asks the claimant to "Mark the reason why you overpaid your return[;]" Step 4 requires the claimant to "Correct your financial information[;]" and Step 5 requires the claimant to sign the return, under the following *statement:* "*Under the penalties of perjury, I state that I have examined this claim and, to* the best of my knowledge, it is true, correct and complete. Under penalties of perjury, I state that I have unconditionally refunded to my customer(s) any overpaid sales tax that I collected from my customer(s) and am claiming as an overpayment on this return." *Id.*

The detail requested on form ST-1-X is required by the express text of ROTA § 6a. *35 ILCS 120/6a. That section provides, in pertinent part:*

> § 6a. Claims for credit or refund shall be prepared and filed upon forms provided by the Department. Each claim shall state: (1) The name and *principal business address of the claimant; (2) the period covered by the* claim; (3) the total amount of credit or refund claimed, giving in detail the

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> net amount of taxable receipts reported each month or other return period used by the claimant as the basis for filing returns in the period covered by the claim; (4) the total amount of tax paid for each return period; (5) receipts upon which tax liability is admitted for each return period; (6) the amount of receipts on which credit or refund is claimed for each return period; (7) the tax due for each return period as corrected; (8) the amount of credit or refund claimed for each return period; (9) reason or reasons why the amount, for which the claim is filed, is alleged to have been paid in error; (10) a list of the evidence (documentary or otherwise) which the claimant has available to establish his compliance with Section 6 as to bearing the burden of the tax for which he seeks credit or refund; (11) payments or parts thereof (if any) included in the claim and paid by the claimant under protest; (12) sufficient information to identify any suit which involves this Act, and to which the claimant is a party, and (13) such other information as the Department may reasonably require. ***
>
> ***

35 ILCS 120/6a.

The legislature's use of the word "shall" reflects that a retailer seeking a credit for ROT claimed to have been paid in error is required to specifically identify the different *amounts and items of information described in* ROTA § 6a. *Id.*; Emerald Casino, Inc. v. Illinois Gaming Board, 346 Ill. App. 3d 18, 21, 803 N.E.2d 914, 916 (1st Dist. 2004) ("Generally, 'shall' indicates a mandatory intent. ... However, the word's meaning is *not fixed or inflexible, and courts sometimes interpret it as directory.*"). *The legislature,* in other words, has determined that the specific items of information detailed in ROTA § 6a constitutes a material part of a retailer's claim for credit. 35 ILCS 120/6a; American *Airlines, Inc. v. Department of Revenue, 402 Ill. App. 3d 579, 588, 931 N.E.2d 666, 682-*83 (1st Dist. 2009) ("... [ROTA] sections 6 and 6a both provide that in properly filing a refund claim, the taxpayer bears the burden of proof in establishing the exact *amount* of *refund sought.") (emphasis original). By providing this detailed information, the retailer* identifies the particular gross receipts regarding which it claims to have overpaid tax in error. Providing this information also allows the Department to ensure that, if a refund is

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warranted, it would be no greater than the amount of tax the retailer can document that it actually overpaid. American Airlines, Inc., 402 Ill. App. 3d at 588, 931 N.E.2d at 682-83.

Notwithstanding the statutory requirement to provide specific information regarding all claims for refund, on the Claim forms Citi filed for an entire 2 year period, it failed to provide information that identifies the transactions for which it claims to have paid tax in error. Stip. Ex. A, pp. 1-4. Step 3 of form ST-1-X asks the retailer/filer to "[m]ark the reason(s) why you have overpaid your return[,]" and sets forth several different factual bases, to allow the filer to explain why it is claiming that it previously overpaid ROT in error. On Step 3 of Citi's Claim forms, Citi marked that it was "... increasing Line 2 [of Step 4] because I sold merchandise[,]" but it failed to mark any of the required bases to explain why it increased Line 2 on the following page. Stip. Ex. A, pp. 1, 3. Then, in Step 4 of its Claim forms, Citi was required to provide sufficient financial information to substantiate its claim that it had previously overpaid a specific amount of tax in error. Stip. Ex. A, pp. 2, 4. While it entered numbers on certain lines of Step 4, it provided no documentary evidence at all to support such entries. See Bohannon v. Commissioner, T.C. Memo. 1997-153 (March 26, 1997) ("A tax return does not establish the correctness of the facts stated in it.") (citing Seaboard Commercial Corp. v. Commissioner, 28 T.C. 1034, 1051 (1957)).

Logically, the absence of any detailed, financial information on Citi's Claim forms makes perfect sense, given the stipulated facts; Citi is not a retailer, and did not file original ST-1 forms during the claim periods. Stip. ¶¶ 2-3; Stip. Ex. A, pp. 2, 4. While Citi may know perfectly well the amount of gross receipts it realized from extending

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credit during 2008 and 2009, none of those receipts was derived from selling tangible personal property at retail. Stip. ¶¶ 2-3; Stip. Ex. A, pp. 2, 4.

Further, even if I agreed that Citi stood in the shoes of whatever Retailers might have filed original returns to report the gross receipts from sales to Citi's credit customers, nothing on Citi's Claim forms show which Retailers filed original ST-1 returns, what entries were made on such returns, or where those Retailers were doing business in Illinois. *See* Stip. Ex. A, pp. 2, 4. Certainly, no evidence or argument was offered to explain why, when the Illinois ROT rate is 6.25%, Citi is asking for a refund in the amount of 8% of its reported increased deductions. Stip. Ex. A, pp. 2, 4 (lines 3, 27); *35 ILCS 120/2-10. On this point, I acknowledge that certain retailers are required to pay* municipal retailers' occupation taxes (MROT) and/or municipal use taxes (MUT), based on the physical location where the retailer is conducting business. *E.g.* Chemed Corp., Inc. v. Illinois Department of Revenue, 186 Ill. App. 3d 402, 542 N.E.2d 492 (4th Dist. 1989). These retailers are, therefore, required to remit to the State more than 6.25% in tax regarding their retail sales. *Id.* But nothing in Citi's Claim forms shows that all of the Retailers that Citi had Agreements with were physically located in jurisdictions that *levied the identical amount of MROT/MUT. See Stip. Ex. A, passim.*

In this contested case, Citi bears the burden to show, with documentary evidence *closely identified with its books and records, that it was entitled to the refund sought.* American Airlines, Inc., 402 Ill. App. 3d at 588, 931 N.E.2d at 682-83. That burden extends not just to the type of evidence which shows that Citi was, in fact, *the retailer that* paid ROT in error to the Department, but it also extends to Citi's burden to show that it is entitled to a refund in the amount claimed. *Id.*

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The Department denied Citi's Claim (Stip. Ex. B), and that Denial is *presumptively correct. 35 ILCS 120/6b. The way to rebut the Department's prima facie* case is to actually offer into evidence the books and records necessary to show that the *Department's Denial was in error.* PPG Industries, Inc., 328 Ill. App. 3d at 33, 765 N.E.2d at 48. Citi did not do so here.

In summary, Citi was not engaged in the occupation of selling tangible personal property at retail. Stip. ¶ 2; 35 ILCS 120/2. Citi did not bear the burden of the tax that is imposed by the ROTA, and it never remitted any ROT to the Department. Stip. ¶¶ 2-3; 35 ILCS 120/2. Since it never remitted any ROT to the Department, it could not have paid any such tax in error, and it is not entitled to a credit under either ROTA § 6 or ROTR § *130.1960(d). Stip. ¶¶ 2-3; 35 ILCS 120/6; 86 Ill. Admin. Code § 130.1960(d). Further,* and regardless whether the Retailers assigned their rights under the Agreements to Citi (Stip. ¶ 2), the facts here show that no Retailer would have been entitled to obtain a refund authorized by ROTR § 130.1960(d). That is because the Retailers had shifted their burden for ROT by collecting a complementary amount of use tax from the customers to whom it extended credit, and because the Retailers' Agreements with Citi were "on a non-recourse basis." Stip. ¶¶ 2-3; Stip. Ex. A, pp. 1-4 (Steps 3, 5); 35 ILCS 120/6. Finally, Citi wholly failed to offer support for its claim that it is entitled to a refund in the amount claimed. *See* Stip. Ex. A.

Conclusion:

I recommend that the Director finalize the Department's Denial as issued.

December 11, 2012
Date

John E. White, Administrative Law Judge

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

CITIBANK, N.A., a national banking association,	)	
Plaintiff,	)	
v.	)	**Case No. 13 L 050072**
ILLINOIS DEPARTMENT OF REVENUE; and BRIAN HAMER, as Director of the Illinois Department of Revenue,	)	
Defendants.	)	

ORDER and OPINION

I. OPINION

Plaintiff Citibank, N.A., ("Plaintiff") filed a complaint seeking judicial review of the Illinois Department of Revenue's ("Department") denial of Plaintiff's claim for refund of Retailers' Occupation Tax ("ROT"), pursuant to 86 Ill. Admin. Code § 130.1960.[1] The issue before the Court is whether Plaintiff is entitled to a refund of tax that is equal to a portion of the ROT remitted to the Department by retailers from whom certain of Plaintiff's credit account customers made retail purchases of tangible personal property, and which accounts were later written off by Plaintiff as bad debts.

FACTS

In lieu of a hearing, the parties submitted a Stipulation of Facts ("Stip.") and exhibits from which the following facts are taken.

Plaintiff provided sales financing programs to numerous retailers ("Retailers") in the State of Illinois. Stip. ¶ 2. As part of their normal business, the Retailers offered their customers

[1] Subsequent to filing its refund claim, Citicorp Trust Bank merged into Citibank, N.A., which is now the successor to Citicorp Trust Bank, fsb.

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the option of financing their purchases, including the amount of Illinois tax due on such purchases, on a credit basis. Stip. ¶ 2.

Plaintiff entered into agreements ("Agreements") with Illinois Retailers which provide that Plaintiff would originate or acquire consumer charge accounts and receivables from such Retailers on a non-recourse basis. Stip. ¶ 2. Under those Agreements, Plaintiff acquired any or all applicable contractual rights relating thereto, including the right to any and all payments from the customers and the right to claim ROT refunds or credits. Stip. ¶ 2.

Under the Agreements, when a customer financed a purchase using the consumer's account, Plaintiff remitted to the Retailer the amount that the customer financed. Stip. ¶ 3. This included some or the entire purchase price, depending on whether the customer financed the entire purchase or only a portion of the purchase, and the amount of the tax that the purchaser owed based on the selling price of the property purchased. Stip. ¶ 3. The Retailers then remitted the complementary amount of ROT they owed to the State for each transaction. Stip. ¶ 3.

Some of the customers subsequently defaulted on their accounts ("Accounts"), and it is these defaulted Accounts that are the subject of Plaintiff's claim in this case. Stip. ¶ 4. When the customers defaulted on the Accounts, they did not repay the full amount of the purchase price and the ROT, and a portion of such amounts remain unpaid. Stip. ¶ 4.

After reasonable attempts to collect the balances that remained on the defaulted Accounts, Plaintiff determined that they were worthless. Stip. ¶ 5. All of the surrounding circumstances indicated that the debts were uncollectible and that legal action to enforce payment would not result in the satisfaction of execution on a judgment. Stip. ¶ 5. Plaintiff wrote the remaining balances off as worthless on its books and records. Stip. ¶ 5. It was further

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stipulated that Plaintiff, and not the Retailers, "bore the economic loss on these defaulted accounts." Recommendation for Disposition ¶ 6.

Plaintiff claimed the remaining, unpaid, balances on these Accounts as bad debts, pursuant to § 166 of the Internal Revenue Code, on its United States corporate income tax returns. Stip. ¶ 6. These bad debts were written off over the period of January 1, 2008 to December 31, 2009, and claimed on Plaintiff's United States corporate income tax returns covering this period. Stip. ¶ 6.

On September 28, 2010, Plaintiff filed a claim for a refund or credit pursuant to 86 Ill. Admin. Code § 130.1960. Stip. ¶ 7. The claim was for the period from January 1, 2008 through December 31, 2009, in the amount of $1,600,853.32. Stip. ¶¶ 1, 7. That amount is the portion of Account balances that were written off as bad debts that is attributable to the ROT. Stip. ¶ 7. Of this total amount, $640,123.00 is attributable to the period of January 1, 2008 through December 31, 2008 and $960,731.00 is attributable to the period of January 1, 2009 through December 31, 2009. Stip. ¶ 7.

The Department denied Plaintiff's claim on January 31, 2011. Stip. ¶ 8. Plaintiff then protested the denial and asked for an administrative hearing. Stip. ¶ 9. The matter proceeded to hearing before Administrative Law Judge John E. White ("ALJ"). On December 11, 2012, the ALJ issued a Recommendation for Disposition in which he found Plaintiff was not entitled to a refund. On December 13, 2012, the Department issued a Final Determination of Claim, in accordance with the ALJ's recommendation, denying Plaintiff's refund claim.

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STANDARD OF REVIEW

The standard of review of an administrative agency's decision depends on whether the issue presented is a question of fact, a question of law, or a mixed question of law and fact. *Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 272, 917 N.E.2d 899, 904 (2009). When reviewing an administrative agency's decision, a question of fact is overturned only where the administrative decision is against the manifest weight of the evidence. *Decatur Sports Found. v. Dep't of Revenue*, 156 Ill. App. 3d 623, 627, 509 N.E.2d 1103, 1105 (4th Dist. 1987). An administrative agency's findings and conclusions on questions of fact are *prima facie* true and correct and will not be disturbed unless they are against the manifest weight of the evidence. *Cent. Furniture Mart, Inc. v. Johnson*, 157 Ill. App. 3d 907, 910, 510 N.E.2d 937, 939 (1st Dist. 1987).

A pure question of law exists where the issue is the proper interpretation of the meaning of the language of a statute. *Cinkus v. Vill. of Stickney Municipal Officers Electoral Bd.*, 228 Ill. 2d 200, 210, 886 N.E.2d 1011, 1018 (2008). An agency's rulings on questions of law are reviewed *de novo*. *Exelon Corp.*, 234 Ill. 2d at 272.

DISCUSSION

The issue before this Court is whether Plaintiff is entitled to a refund of tax that is equal to a portion of the ROT remitted to the Department by retailers from whom certain of Plaintiff's credit account customers made retail purchases of tangible personal property, and which accounts were later written off by Plaintiff as bad debts. Because the proper interpretation of a statute is a question of law, the Court applies the *de novo* standard of review. *Id.*

"The primary rule of statutory construction is to give effect to legislative intent by first looking at the plain meaning of the language." *Davis v. Toshiba Mach. Co.*, 186 Ill. 2d 181, 184,

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710 N.E.2d 399, 401 (1999). Where statutory language is clear and unambiguous, a court must give it effect as it is written "without reading into it exceptions, limitations or conditions that the legislature did not express." *Id.* at 184-85, (citation and internal quotations omitted). Courts refuse to read meanings into statutory language that were not specifically included. *See Van's Material Co. v. Dep't of Revenue*, 131 Ill. 2d 196, 545 N.E.2d 695 (1989). Where the language of a statute is clear and unambiguous, a court must apply it as written, without resort to extrinsic aids of statutory construction. *CBS Outdoor, Inc. v. Dep't of Transp.*, 2012 IL App (1st) 111387, ¶ 29, 970 N.E.2d 509, 514 (1st Dist. 2012).

It is a generally recognized principal that courts give "substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with the administration and enforcement of the statute" as these interpretations express an informed source for ascertaining legislative intent. *Illinois Consol. Tel. Co. v. Illinois Commerce Comm'n*, 95 Ill. 2d 142, 152-53, 447 N.E.2d 295, 300 (1983) (citations omitted). Administrative regulations have the force of law and are construed under the same standards governing statutory construction. *CBS Outdoor, Inc.*, 2012 IL App (1st) 111387 at ¶ 27. The court's objective in interpreting an agency regulation is to ascertain and give effect to the intent of the agency. *Id.* The most reliable indicator of an agency's intent is the language of the statute itself and, where the language is clear and unambiguous, a court must apply it as written, without resort to extrinsic aids of statutory construction. *Id.* When an act defines the terms to be used in it, those terms must be construed according to the definitions given them in the act. *Laborer's Int'l Union of North America, Local 1280 v. Illinois State Labor Relations Bd.*, 154 Ill. App. 3d 1045, 1059, 507 N.E.2d 1200, 1209 (5th Dist. 1987).

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When interpreting a statute, an administrative agency cannot expand statutory language by implication beyond its clear import. *See Van's Material Co.*, 131 Ill. 2d 196 (court refused to find that "manufacturing facility" was limited to manufacturing that occurred in a fixed location); *Canteen Corp. v. Dep't of Revenue*, 123 Ill. 2d 95, 525 N.E.2d 73 (1988) (court adopted the definition of "premises" which was expressed in the Department's regulation and refused to extend or restrict it as the parties asked); *Nokomis Quarry Co. v. Dep't of Revenue*, 295 Ill. App. 3d 264, 692 N.E.2d 855 (5th Dist. 1998) (The court refused to use dictionary definitions where the statute used the term "commonly regarded as manufacturing."). In each of those cases a term was defined by statute. In each of those cases the Department attempted to add to, or subtract from, the statute's language. The Illinois Supreme Court found each of the attempts to add or subtract language from the statute to be unduly restrictive and not within the scope of the statute.

Similarly, a regulation cannot create requirements, exceptions, limitations or conditions that conflict with the express legislative intent as reflected in the statutory language. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 479, 639 N.E.2d 1282, 1287 (1994). Therefore, an administrative agency that promulgates regulations cannot extend its authority or impose a limitation on a statute that the legislature did not prescribe. *Wesko Plating, Inc. v. Dep't of Revenue*, 222 Ill. App. 3d 422, 425-26, 584 N.E.2d 162, 164 (1st Dist. 1991).

Section 6b of the ROTA provides that the Department's denial of a taxpayer's claim for credit constitutes prima facie proof that the taxpayer is not entitled to a credit. 35 ILCS 120/6b. The Department's prima facie case is a rebuttable presumption. This presumption is overcome, and the burden shifts back to the Department to prove its case, only after a taxpayer presents evidence that is consistent, probable and identified with its books and records, to show that the

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Department's determinations are wrong. *Copilevitz v. Dep't of Revenue*, 41 Ill. 2d 154, 156-57, 242 N.E.2d 205, 206-07 (1968).

In Illinois, "it is well settled that in the absence of statute, taxes voluntarily paid cannot be recovered no matter how meritorious the claim." *Peoples Store of Roseland v. McKibbin*, 379 Ill. 148, 152, 39 N.E.2d 995, 998 (2009) (citing *People ex rel. Switzer v. Orrington Co.*, 360 Ill. 289 (1935)). Section 6 of the ROTA "is a special remedial statute;" and is limited to those persons, normally retailers, who have paid the tax pursuant to the act by reason of mistake, a tax that was not actually due. *Peoples Store of Roseland*, 379 Ill. at 152.

Plaintiff argues that it is entitled to a refund pursuant to Section 6 of the ROTA, which provides, in pertinent part:

> § 6. Credit memorandum or refund. If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person died or became a person under legal disability, to his or her legal representative, as such. ... Claims submitted by the retailer are subject to the same restrictions and procedures provided for in this Act.
>
> * * *
>
> No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears (a) that the claimant bore the burden of such amount and has not been relieved thereof nor reimbursed therefor and has not shifted such burden directly or indirectly through inclusion of such amount in the price of the tangible personal property sold by him or her or in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he or she or his or her legal representative may be relieved of the burden of such amount, be reimbursed therefor or may shift the burden thereof; or (b) that he or she or his or her legal representative has repaid unconditionally such amount to his or her vendee (1) who bore the burden thereof and has not shifted such burden directly or indirectly, in any manner whatsoever; (2) who, if he or she has shifted such burden, has repaid unconditionally such amount to his own vendee; and (3) who is not entitled to receive any reimbursement therefor from any other source than from his or her vendor, nor to be relieved of such burden in any manner whatsoever. No credit may be allowed or refund made for any amount

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paid by or collected from any claimant unless it appears that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser *and retained by the claimant with respect to the same transaction under the Use* Tax Act.

35 ILCS 120/6.

The Department promulgated 86 Ill. Admin. Code § 130.1960, which provides, in pertinent part:

> § 130.1960 Finance Companies and Other Lending Agencies – Installment Contracts – Bad Debts
>
> * * *
>
> d) Bad Debts
>
> 1) In case a retailer repossesses any tangible personal property and subsequently resells such property to a purchaser for use or consumption, his gross receipts from such sale of the repossessed tangible personal property are subject to Retailers' Occupation Tax. He is entitled to a bad debt credit with respect to the original sale in which the default has occurred to the extent to which he has paid Retailers' Occupation Tax on a portion of the price which he does not collect, or which he is not permitted to retain because of being required to make a repayment thereof to a lending agency under a "with recourse" agreement.
>
> * * *
>
> 2) Retailers who incur bad debt on any tangible personal property that is not repossessed may also obtain bad debt credit as provided in subsections (d)(1) and (3).
>
> 3) In the case of tax paid on an account receivable that becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the Retailers' Occupation Tax Act, on the date that the Federal income tax return or amended return on which the receivable is written off is filed.

86 Ill. Admin. Code § 130.1960 (2000); 24 Ill. Reg. 18376 (eff. December 1, 2000).

Plaintiff argues that the bad debt regulation allows a retailer to claim a refund or deduction where (1) ROT was remitted on the sale and (2) the account is written off as uncollectible for federal tax purposes. It is undisputed that, had the Retailers provided finance

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arrangements to their customers for purchases of tangible personal property, and the customers then defaulted on those, that the Retailers would be entitled to a refund of the tax. The issue before this Court is whether Plaintiff, through its non-recourse Agreements with Retailers whereby all rights to any and all payments from the customers and the right to claim ROT refunds or credits were assigned to it, is entitled to the refund.

In his Recommendation for Disposition, the ALJ went through an in-depth analysis of whether Plaintiff is a retailer or steps into the shoes of the retailer for purposes of obtaining a refund. The Court believes that this analysis is misplaced. The key issue in this case is not whether Plaintiff is a retailer, or steps into the shoes of one, but whether Plaintiff bore the burden of the tax and is therefore entitled to a refund. It is Section 130.1960(d)(3) that is controlling in this matter and not Sections (d)(1) or (2) as the ALJ stated. However, even if the issue was whether Plaintiff was a retailer, the Retailers properly assigned all their rights to the Plaintiff, who therefore stepped into the shoes of the Retailer and is entitled to the refund.

Pursuant to Section 130.1960(d)(3), when a tax is paid on an account receivable which becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the ROTA. 86 Ill. Admin. Code § 130.1960. Section (d)(3) is not limited to accounts receivable held only by retailers, nor can it be. An administrative agency that promulgates regulations cannot impose a limitation on a statute that the legislature did not prescribe. *Wesko Plating, Inc.*, 222 Ill. App. 3d at 425-26.

The ALJ stated that Section 130.1960(d)(2) requires that the party seeking the refund be a retailer. The Court disagrees. First, as stated before, Section 130.1960(d)(3) is controlling in this case and not (d)(2). Second, it is not required that the party seeking the credit or refund be the retailer who remitted ROT in the first place. Because the legislature did not limit Section 6

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of ROTA to retailers, the Department's regulation, 86 Ill. Admin. Code § 130.1960, cannot limit Section 6 to retailers. In this case, Plaintiff paid tax on an account receivable that became a bad debt. Therefore, they are allowed to file a claim for credit in accordance with Section 6 of the ROTA.

Section 6 of ROTA clearly states that a claimant is entitled to a credit or refund for any amount of tax or penalty or interest that has been paid which was not due under the Act. 35 ILCS 120/6. The plain and ordinary meaning of Section 6 shows that the Act does not contemplate that only a retailer can obtain a refund. For purposes of this case, Plaintiff is entitled to a credit or refund as long as it appears that: (1) Plaintiff bore the burden of such amount; (2) Plaintiff has not been reimbursed for the tax or shifted the burden of the tax: and (3) that no understanding or agreement exist whereby Plaintiff may be relieved of the burden of such amount, be reimbursed therefor or may shift the burden thereof. *Id.*

Section 6 of ROTA allows recovery or credit for an overpayment of sales or use taxes only "where the taxpayer himself has borne the burden of the tax, either originally or by reason of an unconditional repayment." *W.F. Monroe Cigar Co. v. Dep't of Revenue*, 50 Ill. App. 3d 161, 162, 365 N.E.2d 574, 575 (1st Dist. 1977). In a normal situation under ROTA, the Retailers shift the burden of the tax to the consumer by including it in the purchase price. The Court notes that if the burden can be shifted to the consumer than it can similarly be shifted to a finance company such as Plaintiff.

In this case, the parties stipulated that, under the Agreements, when a customer financed a purchase using the consumer's account, Plaintiff remitted to the Retailer the amount that the customer financed, including some or the entire purchase price and the amount of the tax that the purchaser owed based on the selling price of the property purchased. The parties further

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stipulated that some of the customers subsequently defaulted on their Accounts and therefore did not repay the full amount of purchase price and the ROT. Thus, it follows that Plaintiff bore the burden of the tax, as it in fact paid the tax, and was not reimbursed for the tax as the customer defaulted on the Account. As to the third requirement, Plaintiff made reasonable attempts to collect the balances owed it but was unsuccessful. The debts became uncollectible and legal action to enforce payment would not result in the satisfaction of execution on a judgment. Accordingly, at the time Plaintiff filed its claim for refund, no understanding or agreement existed whereby Plaintiff could be relieved of the burden of the tax or reimbursed for the tax payment. Therefore, Plaintiff has met the requirements of Section 6 of ROTA for obtaining a credit or refund.

The ALJ noted that the Retailers would only be entitled to a refund if they first unconditionally repaid to the purchaser the use tax they had previously collected from them. 35 ILCS 120/6. Therefore, according to the ALJ, Plaintiff would have to repay the tax to the purchaser before being allowed to claim the tax. The Court cannot agree. Repay is defined as "to pay back; refund; restore; return." Black's Law Dictionary 1167 (5th ed. 1979). This definition implies that the purchaser must have first paid the tax to Plaintiff. However, the stipulated facts of this case provide that the customers in the transactions at issue here defaulted on their Accounts, and therefore did not pay to Plaintiff the full amount of tax. Plaintiff cannot repay something it never received in the first place. Furthermore, Plaintiff is not seeking a refund for tax amounts paid by the customers. It is only seeking a refund of those amounts that the customers failed to pay. Therefore, Plaintiff is not required to refund to the purchaser the use tax that has been collected.

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The ALJ stated that Plaintiff's argument that Illinois law recognizes a broad right to assign claims was misplaced. The ALJ explained that Section 130.1960 expresses two ways a bad debt might occur: (1) the Retailers would be entitled to a bad debt credit had they been the ones that extended financing to their customers, and had the customers' subsequent defaults thereby actually caused the Retailers to be unable to collect all of the selling price of the goods sold; and (2) the Retailers would have been entitled to a bad debt credit if the assignments to Plaintiff were "with recourse." 86 Ill. Admin. Code § 130.1960. The latter does not apply in this case as the Agreements between Plaintiff and the Retailers were "without recourse."

The general rule is that claims against the government are assignable in the absence of language in the statute prohibiting it. *People ex rel. Stone v. Nudelman*, 376 Ill. 535, 539, 34 N.E.2d 851, 853 (1940). There is no such prohibition contained in Section 6 or ROTA or 86 Ill. Admin. Code § 130.1960. An "assignment operates to transfer to the assignee all of the assignor's right, title, or interest in the thing assigned." *Estate of Martinek v. Martinek*, 140 Ill. App. 3d 621, 629, 488 N.E.2d 1332, 1337 (2d Dist. 1986). "The assignee, by acquiring the same rights as the assignor, stands in the shoes of the assignor." *Id.*

Through their Agreements, the Retailers assigned all of their rights under the Accounts to Plaintiff on a non-recourse basis. As assignment is not prohibited in Section 6 of the ROTA or 86 Ill. Admin. Code § 130.1960, Plaintiff stepped into the shoes of the Retailers. As the ALJ stated, had the Retailers been the ones that extended financing to their customers, and had the customers' subsequent defaults thereby actually caused the Retailers to be unable to collect the entire selling price of the goods sold, the Retailers would be entitled to a bad debt credit. As a result of the assignment of rights, Plaintiff steps into the shoes of the Retailers and is entitled to a bad debt credit if they extend financing to customers and the customers subsequently default,

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thereby causing Plaintiff to be unable to collect all of the selling price of the goods. Plaintiff is therefore entitled to a bad debt credit or refund.

As a final point, the ALJ found that Plaintiff is not entitled to a bad debt credit or refund as it failed to submit the detailed information required to be included on a claim form. The Court disagrees. 35 ILCS 120/6a provides, in pertinent part:

> Sec. 6a. Claims for credit or refund shall be prepared and filed upon forms provided by the Department. Each claim shall state: (1) The name and principal business address of the claimant; (2) the period covered by the claim; (3) the total amount of credit or refund claimed, giving in detail the net amount of taxable receipts reported each month or other return period used by the claimant as the basis for filing returns in the period covered by the claim; (4) the total amount of tax paid for each return period; (5) receipts upon which tax liability is admitted for each return period; (6) the amount of receipts on which credit or refund is claimed for each return period; (7) the tax due for each return period as corrected; (8) the amount of credit or refund claimed for each return period; (9) reason or reasons why the amount, for which the claim is filed, is alleged to have been paid in error; (10) a list of the evidence (documentary or otherwise) which the claimant has available to establish his compliance with Section 6 [35 ILCS 120/6] as to bearing the burden of the tax for which he seeks credit or refund; (11) payments or parts thereof (if any) included in the claim and paid by the claimant under protest; (12) sufficient information to identify any suit which involves this Act, and to which the claimant is a party, and (13) such other information as the Department may reasonably require. Where the claimant is a corporation or limited liability company, the claim filed on behalf of such corporation or limited liability company shall be signed by the president, vice-president, secretary or treasurer, by the properly accredited agent of such corporation, or by a manager, member, or properly accredited agent of the limited liability company.

35 ILCS 120/6a.

The ALJ found that Plaintiff failed to provide detailed financial information on its claim forms. First, the ALJ states that Plaintiff failed to provide information that identifies the transactions for which it claims to have paid tax in error. The Court finds no such requirement in Section 6a nor in the Department's Form, ST-1-X Amended Sales and Use Tax and E911 Surcharge Return. Similarly, the ALJ stated that Plaintiff provided no documentary evidence at all to support its entries. Again, no such requirement is present in Section 6a. Section 6a merely

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requires that the claimant provide a "list of evidence," not the evidence itself. Finally, the ALJ found that nothing on Plaintiff's claim forms show which Retailers filed original ST-1 returns, what entries were made on such returns, or where those Retailers were doing business in Illinois. None of this information is required by Section 6a or Form ST-1-X.

II. ORDER

This matter having been fully briefed, and the Court being fully apprised of the facts, law and premises contained herein, it is ordered as follows:

A. Plaintiff Citibank, N.A. is entitled to a refund pursuant to 35 ILCS 120/6; 800 1

B. The ruling of the Illinois Department of Revenue is reversed.

ENTERED: _____
Judge Patrick Sherlock

Judge Patrick J. Sherlock
OCT 17 2013
Circuit Court – 1942

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APPEAL TO THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AAP
A.W.W.

From the Circuit Court of Cook County, Illinois 13-36507

CITIBANK, N.A.,	)	Appeal from the Circuit Court of Cook County, Illinois.
Plaintiff-Appellee,	)	
v.	)	No. 13 L 50072
ILLINOIS DEPARTMENT OF REVENUE, and BRIAN HAMER, Director of the Illinois Department of Revenue,	)	The Honorable PATRICK J. SHERLOCK, Judge Presiding.
Defendants-Appellants.	)	

DOROTHY BROWN CLERK
CIVIL APPEALS DIVISION
2013 NOV 22 AM 11:01
FILED-1
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

NOTICE OF APPEAL

The Illinois Department of Revenue (the "Department"), and Brian Hamer, Director of the Department (collectively, "Defendants"), by their counsel, Illinois Attorney General Lisa Madigan, (1) appeal from the circuit court's October 17, 2013 judgment reversing Defendants' administrative decision in this matter, and (2) request, cumulatively and in the alternative, (a) reversal of that judgment by the circuit court, either in its entirety or with respect to the amount of the tax refund claimed by plaintiff Citibank, N.A., (b) reinstatement of Defendants' administrative decision, in whole or in part, and (c) such further relief as is warranted.

LISA MADIGAN
Attorney General of Illinois

By: Richard S. Huszagh

Richard S. Huszagh
Assistant Attorney General
100 W. Randolph, 12th Floor
Chicago, Illinois 60601
(312) 814-2587

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PROOF OF FILING AND SERVICE BY MAIL

The undersigned states, under penalty of law as provided by 735 ILCS 5/1–109 (2012), that on November 18, 2013, he:

1. deposited the original and two copies of the foregoing Notice of Filing By Mail and attached Notice of Appeal in the U.S. Mail at the U.S. Post Office located at 433 W. Harrison Street, Chicago, Illinois, in an envelope with first class postage fully prepaid, addressed to:

Dorothy Brown, Clerk
Circuit Court of Cook County
Richard J. Daley Center
50 W. Washington St.
Chicago, IL 60602

2. deposited one copy each of the foregoing Notice of Filing By Mail and attached Notice of Appeal in the U.S. Mailbox at 100 W. Randolph St., Chicago, Ill., 60601, in an envelope *with first class postage fully prepaid, addressed to:*

Fred Marcus
Horwood Marcus Berk Chtd.
500 W. Madison St., Suite 3700
Chicago, IL 60661

Brain R. Harris
Akerman Seterfitt
50 N. Laura St.
Jacksonville, FL 32202

Anthony Berardi

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3351 #[redacted]000

APPEAL TO THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AAP
A.W.W.

From the Circuit Court of Cook County, Illinois

CITIBANK, N.A.,	)	Appeal from the Circuit Court of Cook County, Illinois.
Plaintiff-Appellee,	)	
v.	)	
	)	No. 13 L 50072
ILLINOIS DEPARTMENT OF REVENUE, and BRIAN HAMER, Director of the Illinois Department of Revenue,	)	The Honorable PATRICK J. SHERLOCK, Judge Presiding.
Defendants-Appellants.	)	

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CIRCUIT COURT OF COOK COUNTY, ILL.
2013 NOV 22 AM 11:01
DOROTHY BROWN
CLERK
CIVIL APPEALS DIVISION

NOTICE OF FILING BY MAIL

To:

Fred Marcus
Horwood Marcus Berk Chtd.
500 W. Madison St., Suite 3700
Chicago, IL 60661

Brain R. Harris
Akerman Seterfitt
50 N. Laura St.
Jacksonville, FL 32202

Please take notice that on November 18, 2013, the undersigned caused the accompanying Notice of Appeal to be filed by mail with the Clerk of the Circuit Court of Cook County, Illinois.

LISA MADIGAN
Attorney General of Illinois

By: [signature]
Richard S. Huszagh
Assistant Attorney General
100 W. Randolph, 12th Floor
Chicago, Illinois 60601
(312) 814-2587

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KeyCite Yellow Flag - Negative Treatment
Appeal Allowed by Citibank, N.A. v. Illinois Department of Revenue, Ill., March 29, 2017

2016 IL App (1st) 133650
Appellate Court of Illinois,
First District, Third Division.

CITIBANK, N.A., Plaintiff–Appellee,
v.
The ILLINOIS DEPARTMENT OF REVENUE and Brian Hamer, Director of Revenue, Defendants–Appellants.
Chrysler Financial Services Americas, LLC, n/k/a TD Auto Finance, LLC, Plaintiff–Appellant,
v.
The Illinois Department of Revenue and Brian Hamer, Director of Revenue, Defendants–Appellees.

Nos. 1–13–3650, 1–15–0812.
|
Nov. 2, 2016.

Synopsis

Background: Department of Revenue sought review of decision of the Circuit Court, Cook County, Patrick J. Sherlock, J., reversing Department's denial of taxpayer's claim for refund of taxes under Retailers' Occupation Tax Act (ROTA). Taxpayer sought review of decision of the Circuit Court, Cook County, Robert Lopez–Cepero, J., affirming Department's denial of claim for refund of ROTA taxes. Appeals were consolidated.

Holdings: The Appellate Court, Pucinski, J., held that:

[1] assignment of right to pursue refund of ROTA taxes was not precluded by ROTA;

[2] assignment of right to pursue refund of ROTA taxes was not precluded by public policy;

[3] taxpayer was entitled to refund of ROTA taxes;

[4] failure to submit supporting documentation regarding amount of ROTA taxes paid did not preclude refund; and

[5] trial court order upholding denial of refund claim was final order triggering obligation to appeal.

Affirmed in part; appeal dismissed in part.

West Headnotes (15)

[1] Administrative Law and Procedure
Scope

On appeal from a Circuit Court's review of an administrative decision, the Appellate Court reviews the determination of the administrative agency, not that of the Circuit Court.

Cases that cite this headnote

[2] Administrative Law and Procedure
Law questions in general

Administrative agency decisions on questions of law are reviewed de novo.

Cases that cite this headnote

[3] Administrative Law and Procedure
Particular Questions, Review of

When reviewing an administrative decision, questions of mixed law and fact are reviewed for clear error.

Cases that cite this headnote

[4] Assignments
Nature and essentials in general

An "assignment" is a transfer of property or a right from one person to another, which confers a complete and present right in the property or right to the assignee.

Cases that cite this headnote

[5] Assignments
Nature of right to assign

Assignability is the rule in today's legal world, and nonassignability is the exception.

Cases that cite this headnote

[6] **Assignments**
Nature of right to assign
Assignments
Legality of consideration

Both common law and statutory rights are assignable, unless a statute or public policy clearly states otherwise.

Cases that cite this headnote

[7] **Assignments**
Nature and extent of rights of assignee in general

Following an assignment, the assignee stands in the shoes of the assignor with respect to the rights, title, and interest in the thing assigned.

Cases that cite this headnote

[8] **Assignments**
Money due or to become due
Taxation
Refunding Taxes Paid

Retailers' assignment of rights to pursue refund of taxes under Retailers' Occupation Tax Act (ROTA) to bank that owned consumers accounts used to pay taxes was not barred by ROTA, and therefore bank had standing to pursue refund claims associated with uncollectible debt on credit and installment contracts financed by bank for purchase of goods; ROTA did not discuss assignment of right to refund, much less limit or prohibit such an assignment. S.H.A. 35 ILCS 120/6.

Cases that cite this headnote

[9] **Taxation**
Payment

Although a single sale and purchase triggers the duty to pay taxes under both the Use Tax Act and the Retailers' Occupation Tax Act (ROTA), the Department of Revenue receives payment for only one of the taxes, and that payment satisfies both taxes. S.H.A. 35 ILCS 105/3, 120/6.

Cases that cite this headnote

[10] **Assignments**
Legality of consideration
Taxation
Refunding Taxes Paid

Retailers' assignment of rights to pursue refund of taxes under Retailers' Occupation Tax Act (ROTA) to bank that owned consumers accounts used to pay taxes was not barred by public policy, and therefore bank had standing to pursue refund claims associated with uncollectible debt on credit and installment contracts financed by bank for purchase of goods; assignment did not preclude Department of Revenue from vetting applications for refunds, and compensation bank received for its services had no bearing on fairness of assignability of tax refund claims. S.H.A. 35 ILCS 120/6.

Cases that cite this headnote

[11] **Assignments**
Rights of assignee as against debtor
Taxation
Refunding Taxes Paid

Assignee of retailers who remitted taxes was entitled to refund of Retailers' Occupation Tax Act (ROTA) taxes associated with uncollectible debt on credit and installment contracts for purchase of goods; such taxes were considered paid in error and refundable to the retailers, and it was stipulated that the taxes were paid the State. S.H.A. 35 ILCS 120/6.

Cases that cite this headnote

[12] **Taxation**
Refunding Taxes Paid

Failure of assignee of retailers' right to pursue refund of Retailers' Occupation Tax Act (ROTA) taxes to submit supporting

documentation regarding amount of ROTA taxes paid did not preclude refund of taxes associated with uncollectible debt on credit and installment contracts financed by bank for purchase of goods, where Department of Revenue stipulated to amount of taxes paid on bad debt. S.H.A. 35 ILCS 120/6.

Cases that cite this headnote

[13] Taxation

Actions

Circuit Court order upholding Department of Revenue's denial of taxpayer's claim for refund of Retailers' Occupation Tax Act (ROTA) taxes was final order triggering taxpayer's obligation to file notice of appeal; although Court subsequently issued supplemental opinion, original order fully disposed of claim seeking review of Department determination that taxpayer was not entitled to a refund. Sup.Ct.Rules, Rule 303(a)(1).

Cases that cite this headnote

[14] Appeal and Error

Determination of questions of jurisdiction in general

Appeal and Error

Want of jurisdiction

The Appellate Court has a duty to consider its jurisdiction sua sponte and to dismiss if jurisdiction is wanting.

1 Cases that cite this headnote

[15] Appeal and Error

Determination of Controversy

Appeal and Error

Determination of part of controversy

To be final, an order must dispose of the parties' rights either upon the entire controversy or upon such definite and separate part thereof, such as a claim in a civil case. Sup.Ct.Rules, Rule 301.

Cases that cite this headnote

Attorneys and Law Firms

***347** Lisa Madigan, Attorney General, of Chicago (Carl J. Elitz, Assistant Attorney General, of counsel), for appellants Illinois Department of Revenue and Brian Hamer.

Horwood Marcus & Berk Chtrd., of Chicago (Fred O. Marcus, of counsel), and Akerman LLP, of Tampa, Florida (Brian R. Harris, of counsel), for appellee Citibank, N.A.

OPINION

Justice PUCINSKI delivered the judgment of the court, with opinion.

****135** ¶ 1 These consolidated appeals involve the review of the determinations of the Department of Revenue (Department) on claims by plaintiffs Citibank, N.A. (Citibank) and Chrysler Financial Services America, LLC, n/k/a TD Auto Finance, LLC (Chrysler), for refunds of taxes under section 6 of the Retailers' Occupation Tax Act (ROTA) (35 ILCS 120/6 (West 2012)). Citibank and Chrysler sought refunds of ROTA taxes associated with uncollectible debt on credit and installment contracts financed by Citibank and Chrysler for the purchase of goods. The Department denied both Citibank's and Chrysler's claims for refunds. The circuit court reversed the Department's determination on Citibank's claim, which the Department now appeals (Appeal No. 1–13–3650). In contrast, the circuit court affirmed the Department's determination on Chrysler's claim, in response to which Chrysler instituted the other appeal at issue in this matter (Appeal No. 1–15–0812).

¶ 2 For the reasons that follow, we affirm the judgment of the circuit court on Citibank's claim. Although involving very similar facts relevant to the issue of standing, Chrysler's appeal must be dismissed for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 Appeal No. 1–13–3650

¶ 5 In its claim to the Department, Citibank sought a refund of $1,600,853.32 in ROTA taxes paid on sales funded through the use of consumer accounts owned by Citibank. Citibank's claim was submitted to the Department's administrative law judge (ALJ) on facts stipulated to by the parties. Those stipulated facts established the following:

¶ 6 The retailers (doing business in Illinois) involved in the sales at issue provided their customers with the option to finance their purchases, including the applicable ROTA tax, on a credit basis. Citibank, through agreements with the retailers, would then originate or acquire those consumer charge accounts and receivables from the retailers on a non-recourse basis. Under these agreements, Citibank acquired all rights related to the accounts, including the right to all payments from ****136 *348** the consumers and the right to claim ROTA tax refunds or credits.

¶ 7 Each time a consumer used his or her account to finance a purchase, Citibank would remit to the retailer the full amount financed by the consumer, including any applicable ROTA tax. The retailer would then remit the ROTA tax to the State.

¶ 8 Eventually, some of the consumers on these accounts defaulted, leaving unpaid balances that included amounts attributable to financed ROTA taxes. After attempting to collect the balances on the defaulted accounts, Citibank determined that the defaulted accounts were worthless, wrote the balances off on its books and records, and claimed the balances as bad debt on its federal income taxes between January 1, 2008, and December 31, 2009.

¶ 9 The $1,600,853.32 Citibank sought to have refunded constituted that portion of the ROTA taxes attributable to the unpaid and written off balances of the defaulted consumer accounts.

¶ 10 On January 31, 2011, the Department issued a Notice of Tentative Denial to Citibank. In response, Citibank requested an administrative hearing. In his recommendation for disposition, the ALJ recommended that (1) Citibank's claim be denied on the bases that Citibank did not include all of the required information or sufficient detail on its application for a refund, (2) Citibank did not bear the burden of the ROTA tax, (3) the ROTA tax was not paid in error, (4) there was no evidence that any erroneously paid taxes were refunded to the consumer, (5) Citibank was not the remitter of the taxes to the State, and (6) the assignments from the retailers to Citibank did not give Citibank a right to a refund of the ROTA taxes. On December 13, 2012, the Director of the Department adopted the ALJ's recommendation. Citibank appealed to the Circuit Court of Cook County.

¶ 11 On October 17, 2013, the circuit court issued an order reversing the Department's denial of Citibank's claim. The circuit court concluded that the primary issue was whether Citibank bore the burden of the taxes, not whether it was a retailer, as neither the applicable statute nor the applicable administrative regulation limited refunds to retailers. According to the circuit court, even if it was of some consequence whether Citibank was a retailer, the retailers had properly assigned their rights to Citibank, entitling Citibank to a refund. Finally, the circuit court concluded that Citibank was not required to refund the taxes to the consumer before seeking a refund and that Citibank did not fail to provide all of the information required in its application for a refund.

¶ 12 The Department then filed a timely notice of appeal.

¶ 13 Appeal No. 1–15–0812

¶ 14 In its claim, Chrysler sought a refund of $4,630,622.71 in ROTA taxes on the sales of certain motor vehicles. As in the previous appeal, Chrysler's claim was submitted to the Department's ALJ on facts stipulated to by the parties. Those stipulated facts established the following.

¶ 15 For the sales at issue, the retailer and consumer entered into retail installment contracts (in Illinois) under which the consumer agreed to pay the entire amount financed over time in fixed installments of a specific sum. The total amount financed included the total purchase price of the vehicle, along with the total ROTA tax due on the sale, minus any down payment made by the consumer. Any down payments were applied pro rata between the purchase price and the ROTA tax.

***349 **137** ¶ 16 Contemporaneously with the execution of the installment contracts, the retailers assigned to Chrysler all of their rights, titles, and interests in the installment contracts, without recourse. The assignments included the right to enforce the debt and to repossess the collateral in the event of default by the consumers. In exchange for these assignments, Chrysler paid the retailers the entire amounts financed under the contracts. The retailers then reported and remitted to the State the amount of ROTA taxes due on each of the sales.

¶ 17 Some of the consumers who entered into the installment contracts with the retailers defaulted on their obligations to pay, resulting in a failure to fully repay the total purchase price and ROTA tax amounts. In some instances, the vehicles were repossessed and sold. Any amounts collected on the sale of the repossessed vehicles were applied pro rata between what remained of the sales price and the ROTA tax.

¶ 18 Following reasonable attempts to collect any outstanding balances on the defaulted installment contracts, Chrysler determined them to be worthless and claimed the remaining balances as bad debts on their federal taxes. These bad debts were written off between April 1, 2006, and March 31, 2009.

¶ 19 The $4,630,622.71 Chrysler sought to have refunded constituted the portion of the ROTA taxes attributable to the unpaid and written off balances of the defaulted installment contracts.

¶ 20 On August 6, 2010, the Department issued a notice of tentative denial to Chrysler. In response, Chrysler requested an administrative hearing. In his recommendation for disposition, the ALJ recommended that (1) Chrysler's claim be denied on the bases that Chrysler did not bear the burden of the ROTA tax, (2) the ROTA tax was not paid in error, (3) there was no evidence that any erroneously paid taxes were refunded to the consumer, (4) Chrysler was not the retailer of the goods sold and did not remit the ROTA taxes to the State, (5) the assignment from the retailer to Chrysler did not give Chrysler a right to a refund of the ROTA taxes, and (6) Chrysler failed to prove the claimed refund amount. On November 29, 2012, the Department issued its final determination, denying Chrysler's claim. Chrysler appealed to the Circuit Court of Cook County.

¶ 21 On March 14, 2014, the circuit court issued an order sustaining the Department's denial of Chrysler's claim on the bases that (1) no tax was paid in error, (2) Chrysler did not remit the ROTA taxes to the State, (3) Chrysler was not a retailer, (4) the assignments did not bind the State, and (5) Chrysler did not bear the burden of the ROTA taxes.

¶ 22 Eight and a half months later, on November 25, 2014, Chrysler filed a petition to modify the judgment under section 2–1401 of the Code of Civil Procedure (735 ILCS 5/2–1401 (West 2012)). In the section 2–1401 petition, Chrysler claimed that it did not learn that the circuit court had issued its decision on Chrysler's appeal until October 2014. Chrysler claimed that upon review of the circuit court's decision, it realized that the circuit court had failed to address Chrysler's contention that the ALJ erred in disregarding the parties' stipulation as to the amount of Chrysler's claim and requiring Chrysler to support the claimed amount with documentation. Chrysler requested that the circuit court modify its March 14, 2014, judgment to include an analysis of this issue.

¶ 23 On December 16, 2014, the circuit court issued an order simply stating that the section 2–1401 petition was granted. ****138 *350** Thereafter, on March 3, 2015, the circuit court issued a supplemental opinion, which was identical to its March 14, 2014, order, with the exception that it also contained the circuit court's conclusion that the ALJ had erred in disregarding the parties' stipulation as to the amount of Chrysler's claim and a statement that the period for appeal of the circuit court's decision began to run as of the date the circuit court's supplemental opinion was entered.

¶ 24 Chrysler filed its notice of appeal on March 19, 2015, purporting to appeal from the circuit court's supplemental opinion under Illinois Supreme Court Rule 303(a)(3) (eff. Jan. 1, 2015).

¶ 25 ANALYSIS

¶ 26 On appeal, both Citibank and Chrysler argue that they are entitled to refunds of the ROTA taxes attributable to the uncollectible debt on the defaulted credit and installment contracts, because they bore the burden of the ROTA taxes and because the retailers assigned the rights to such refunds to Citibank and Chrysler. The

Department, on the other hand, argues that Citibank and Chrysler lack standing to obtain refunds of the ROTA taxes, because they are not retailers who remitted the taxes to the State. As we discuss below, Citibank is entitled to a refund as the assignee of the retailers. Chrysler's appeal, however, must be dismissed for lack of jurisdiction.

¶ 27 Appeal No. 1–13–3650

¶ 28 On appeal, the Department argues that Citibank is not entitled to a refund of ROTA taxes attributable to the uncollected amounts on the defaulted accounts because (1) Citibank lacks standing under the relevant statute to seek such a refund because it is not a retailer, and (2) even if it did have standing, Citibank failed to comply with the procedural application requirements of the applicable statutes and regulations. For the reasons that follow, we conclude that Citibank had standing by way of assignment to seek a refund and that any deficiencies in Citibank's application were moot because the Department stipulated that the refund amount sought by Citibank was comprised of ROTA taxes attributable to the unpaid debt.

¶ 29 We first address the Department's motion to strike a portion of Citibank's brief on the basis that it cites to the unpublished decision of *Home Depot USA, Inc. v. Hamer,* No. 4–09–0611, 398 Ill.App.3d 1115, 370 Ill.Dec. 773, 988 N.E.2d 1129 (May 5, 2010) (unpublished order under Supreme Court Rule 23), for the proposition that the Department is collaterally estopped from arguing that Citibank did not bear the burden of the ROTA taxes at issue and, thus, did not have standing to seek a refund. Because we resolve this case on different grounds and do not consider the holding of *Home Depot* in reaching our decision, the Department's motion is denied as moot.

[1] **[2]** **[3]** ¶ 30 We turn now to the merits of this case. On appeal, we review the determination of the administrative agency, not that of the circuit court. *Richard's Tire Co. v. Zehnder,* 295 Ill.App.3d 48, 56, 229 Ill.Dec. 587, 692 N.E.2d 360 (1998). Administrative agency decisions on questions of law—such as whether a party has standing—are reviewed *de novo.* See *City of Belvidere v. Illinois State Labor Relations Board,* 181 Ill.2d 191, 205, 229 Ill.Dec. 522, 692 N.E.2d 295 (1998); *Kohls v. Maryland Casualty Co.,* 144 Ill.App.3d 642, 644, 98 Ill.Dec. 847, 494 N.E.2d 1174 (1986). Questions of mixed law and fact—such as whether Citibank is entitled to a refund of ROTA taxes—are reviewed for clear error. *City of Belvidere,* 181 Ill.2d at 205, 229 Ill.Dec. 522, 692 N.E.2d 295.

***351** ****139** ¶ 31 The Department first contends that Citibank lacks standing to seek a refund of ROTA taxes because it is not a retailer that remitted the taxes to the State and because the right to a refund could not be assigned to Citibank by the retailers. We need not address the Department's contention that only retailers that remit the taxes have standing to pursue a refund, because we conclude that even if only remitting retailers have standing under the statute, the retailers in the present case effectively assigned their rights to pursue a refund to Citibank.

[4] **[5]** **[6]** **[7]** ¶ 32 The parties do not quibble about the law applicable to assignments. An assignment is a transfer of property or a right from one person to another, which confers a complete and present right in the property or right to the assignee. *Amalgamated Transit Worker's Union v. Pace Suburban Division,* 407 Ill.App.3d 55, 60, 347 Ill.Dec. 746, 943 N.E.2d 36 (2011). Assignability is the rule in today's legal world, and nonassignability is the exception. *Kleinwort Benson North America, Inc. v. Quantum Financial Services, Inc.,* 181 Ill.2d 214, 225, 229 Ill.Dec. 496, 692 N.E.2d 269 (1998). Both common law and statutory rights are assignable, unless a statute or public policy clearly states otherwise. *Amalgamated Transit,* 407 Ill.App.3d at 60, 347 Ill.Dec. 746, 943 N.E.2d 36. Following an assignment, the assignee stands in the shoes of the assignor with respect to the rights, title, and interest in the thing assigned. *Collins Co. v. Carboline Co.,* 125 Ill.2d 498, 512, 127 Ill.Dec. 5, 532 N.E.2d 834 (1988); *In re Estate of Martinek,* 140 Ill.App.3d 621, 629–30, 94 Ill.Dec. 939, 488 N.E.2d 1332 (1986).

[8] ¶ 33 The Department asserts that the assignment of the right to a refund of ROTA taxes is prohibited by section 6 of ROTA and violates public policy. We address each of these in turn.

¶ 34 Our supreme court has explained the tax scheme under ROTA and the complementary Use Tax Act (35 ILCS 105/3 (West 2006)) as follows:

> "ROTA and the Use Tax Act are complementary, interlocking statutes that comprise the taxation scheme commonly referred to as the Illinois 'sales tax.' [Citations.] Whereas ROTA imposes a tax 'upon

persons engaged in the business of selling at retail tangible personal property' [citation], the Use Tax Act imposes a tax 'upon the privilege of using in this State tangible personal property purchased at retail from a retailer' [citation]. * * *

A retailer's tax liability under ROTA is computed as a percentage of 'gross receipts' (35 ILCS 120/2–10 (West 2006)), defined as the 'total selling price' (35 ILCS 120/1 (West 2006)). Similarly, the use tax is determined as a percentage of the 'selling price.' 35 ILCS 105/3–10 (West 2006)." *Kean v. Wal–Mart Stores, Inc.,* 235 Ill.2d 351, 362, 336 Ill.Dec. 1, 919 N.E.2d 926 (2009).

The tax rate under both ROTA and the Use Tax Act is 6.25%. 35 ILCS 120/2–10 (West 2014); 35 ILCS 105/3–10 (West 2014).

[9] ¶ 35 Typically, the retailer collects the use tax from the consumer and remits it to the Department. A retailer need not remit the use tax, however, if it has paid the ROTA tax on the gross receipts of the same sale. Accordingly, although a single sale and purchase triggers the duty to pay two different taxes, the Department receives payment for only one of the taxes, and that payment satisfies both taxes. *Kean,* 235 Ill.2d at 363, 336 Ill.Dec. 1, 919 N.E.2d 926.

¶ 36 With respect to refunds of ROTA taxes, section 6 of ROTA provides in relevant part:

***352 **140** "If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as a result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment * * *." 35 ILCS 120/6 (West 2014).

The Department contends that this section limits refunds to the remitter of the tax and, therefore, also prohibits the assignment of the right to a refund to anyone other than the remitter of the tax. We disagree. The language of section 6 does not discuss the assignment of the right to a tax refund, much less limit or prohibit the assignment of such a right. Even if section 6 bestows the right to a tax refund solely upon the remitter of the tax, that does not mean that after the initial bestowment, the remitter is not free to do what it pleases with that right. Given the lack of language in section 6 limiting the assignment of the right to a refund, we conclude that the retailers' assignments to Citibank were not precluded by statute. See *People ex rel. Stone v. Nudelman,* 376 Ill. 535, 539, 34 N.E.2d 851 (1940) (concluding that because the language of the statute did not limit what could be done with a credit memorandum after it was issued or otherwise discuss its assignability, the credit memo was assignable).

[10] ¶ 37 The Department also argues that the assignment of a right to a ROTA tax refund violates public policy (1) because it could result in the refund of taxes not actually paid, leading to the unjust enrichment of persons who did not pay the taxes themselves, and (2) because Citibank was compensated through vendor discounts, cardholder charges, and interest payments. With respect to the first contention, the Department claims that assignments are more likely to result in mistakenly issued refunds than if refunds are limited to those with whom the Department has an existing taxpayer/collector relationship, *i.e.,* retailers. In illustration of this point, the Department points to Citibank's claimed failure to present documentation evidencing the transactions underlying the bad debts. The Department does not explain, and we do not find, any correlation between this supposed lack of evidence and Citibank's status as an assignee. Rather, as discussed below, any lack of documentation on the part of Citibank appears to have been a result of the parties' stipulation to the amount of taxes attributable to the uncollected debt, not Citibank's status as an assignee. Moreover, the conclusion that the right to a refund under section 6 is assignable does not alter the procedural requirements a claimant—whether remitter or assignee—must comply with before a refund will be issued. Therefore, the Department is still free to vet applications for refunds in the same manner it always has.

¶ 38 We also find to be without merit the Department's second contention that the assignment of the right to a ROTA tax refund violates public policy because it would be unfair to allow Citibank to collect a tax refund where it has already been compensated—through vendor discounts, cardholder charges, and interest payments—for the "bad debt risks" inherent in its business through vendor discounts, cardholder charges, and interest payments. The compensation Citibank receives for its services has no bearing on whether the right to a tax refund is assignable. More importantly, it is not the province of this Court to police what is considered to be

fair compensation for Citibank's services. Resolution of what constitutes fair compensation belongs to the parties to the agreement—Citibank and the retailers **141 *353 —and it would appear that the parties considered Citibank's services to be worth not only the vendor discounts, cardholder charges, and interest payments, but also the assignment of any ROTA tax refund that might become due. Thus, regardless of whether the vendor discounts, cardholder charges, and interest payments do, in fact, adequately compensate Citibank for the risks they run in financing purchases by consumers, it is inappropriate to invoke public policy to undo an agreement between the parties. See *Kleinwort,* 181 Ill.2d at 226, 229 Ill.Dec. 496, 692 N.E.2d 269 ("The power to invalidate part or all of an agreement on the basis of public policy is used sparingly because private parties should not be needlessly hampered in their freedom to contract between themselves.").

[11] ¶ 39 Although interwoven into its other arguments, the Department also argues that Citibank is not entitled to a refund via the assignments, because the retailers (the assignors) would not be entitled to a refund under the present circumstances. We disagree. Pursuant to the Department's regulation 130.1960(d) (86 Ill. Adm. Code 130.1960(d) (2000)), a retailer who incurs bad debt on a sale may obtain a "bad debt credit" to the extent that the retailer has paid ROTA taxes on the uncollected debt or to the extent that he has paid ROTA taxes on a portion of the sales price that he is not permitted to retain due to repayment to a lending agency under a "with recourse" agreement. To qualify, the written off debts must be deducted on the retailer's federal taxes. 86 Ill. Adm. Code 130.1960(d)(1)–(2) (2000). These taxes are considered to be paid in error, and the retailer may file a claim for their refund pursuant to section 6 of ROTA. 86 Ill. Adm. Code 130.1960(d)(3) (2000).

¶ 40 According to the parties' stipulation, in the course of business the retailers would offer financing to their customers. Citibank then originated or acquired those credit accounts and receivables from the retailers by way of assignments that included the retailers' rights to any and all payments from the consumer and to claim ROTA tax refunds. In exchange, Citibank would remit to the retailer the entire purchase price plus any applicable ROTA tax. Under these facts, had the assignments not occurred and the retailers retained the accounts on which the consumers defaulted, they would have been permitted to obtain a refund of the ROTA taxes attributable to those portions of the defaulted accounts that were not collected, so long as they deducted the debts on their federal taxes. Accordingly, because the retailers would have been permitted to obtain a refund had they not assigned the accounts, Citibank, by stepping into the retailers' shoes via assignment, should also be permitted to obtain a refund.

¶ 41 The Department disagrees with this conclusion because, according to it, to take advantage of the bad debt credit, the retailer must have either financed the sale itself or have a "with recourse" agreement with a lender. There is no dispute that the latter does not apply, because the parties stipulated that the agreements between the retailers and Citibank were without recourse. As to the former, however, the Department contends that the retailers did not finance the transactions, Citibank did. Even assuming that the bad debt credit regulation requires that a retailer self-finance, the parties' stipulation indicates that is what happened here.

¶ 42 Admittedly, the stipulation of the parties does not specifically state whether the retailers entered into financing agreements directly with the consumers and then sold the rights under those agreements to Citibank or whether Citibank entered into financing agreements directly **142 *354 with the consumer. The stipulation does state, however, that Citibank originated or acquired the accounts *from the retailers* and that Citibank *acquired* all rights to payments from the consumers and to ROTA refunds or credits by way of its agreements with the retailers. These statements do not make sense unless the retailers entered into financing agreements with the consumers directly and then sold and assigned their rights under those financing agreements to Citibank in exchange for payment of the financed amount. After all, if Citibank had not provided the financing directly to the consumer, there would have been nothing for the retailers to assign to Citibank or for Citibank to acquire from the retailers. See *People v. One 1999 Lexus,* 367 Ill.App.3d 687, 692–93, 305 Ill.Dec. 303, 855 N.E.2d 194 (2006) (stating that stipulations are contracts and that they should not be interpreted in such a way so as to render any portion meaningless).

¶ 43 The Department also argues that retailers would not have been able to obtain a refund because there is no

evidence that any of the ROTA taxes were refunded to the consumers. Section 6 of ROTA provides:

> "No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser and retained by the claimant with respect to the same transaction under the Use Tax Act." 35 ILCS 120/6 (West 2014).

This language does not require a refund claimant to return any and all taxes collected from the consumer before pursuing any refund whatsoever. Rather, it simply limits the refund a claimant may seek to those taxes that were paid but not collected from the consumer. Those taxes that were both paid to the State and collected from consumers, however, cannot be refunded to claimants absent refunds being first issued to the consumers. Here, the parties stipulated that the ROTA taxes were paid to the State, but that the consumers did not repay all of the ROTA taxes, *i.e.,* Citibank did not collect all of the taxes. The parties further stipulated that it is these uncollected taxes (as opposed to all of the ROTA taxes) for which Citibank seeks a refund.

¶ 44 The Department's contention that the retailers collected the entire amount of taxes from the consumers and, therefore, a refund is unavailable unless the taxes are first refunded to the consumers is unavailing. First, the retailers did not collect the taxes from the consumer; they collected them from Citibank. Second, as previously discussed, as assignee, Citibank steps into the shoes of the retailers, meaning that if there had been no assignment and the retailers retained the defaulted accounts (and, thus, no deal with Citibank), the retailers would not have been required to refund to the consumers taxes that the consumers had not paid in the first place. Thus, Citibank is also not required to refund to the consumers taxes the consumers have not actually paid. Instead, Citibank is simply limited to seeking a refund of those taxes that remain uncollected.

[12] ¶ 45 Finally, the Department contends that Citibank is not entitled to a refund because it failed to comply with the procedural application requirements of the applicable statutes and regulations, namely, that it failed to provide information required under section 6a of ROTA and failed to submit supporting documentation. More specifically, the Department argues that (1) Citibank failed to identify the merchants that made the sales at issue; (2) represented that it (as opposed to the retailers) had overpaid taxes in an amount ****143** ***355** that equated to a tax rate of 8%; (3) signed the application form, stating that it had repaid any overpaid sales tax collected from its customers; and (4) failed to submit documentary evidence in support of its claimed tax overpayment.

¶ 46 According to the Department, this information was necessary to ensure that any refund given to Citibank did not exceed the amount of the overpaid taxes. Although we agree that it is important to ensure that any refunds issued are in the correct amount, there is no such concern in this case, as the parties specifically stipulated that the amount Citibank sought to have refunded was "the portion of balances that were written off as bad debts that is attributable to the Retailers' Occupation Tax." Because the parties stipulated that the claimed refund amount was equal to the amount of ROTA taxes not collected from the consumers, there was no need for Citibank to provide additional information or evidence in support of this claim. *One 1999 Lexus,* 367 Ill.App.3d at 691, 305 Ill.Dec. 303, 855 N.E.2d 194.

¶ 47 In sum, we conclude that Citibank does have standing to pursue a refund of the ROTA taxes attributable to the uncollected debts as a result of the assignments from the retailers. Any deficiency in Citibank's application for refund or supporting documentation is moot, as the Department stipulated to the amount of ROTA taxes attributable to the uncollected debt, dispensing with the need for Citibank to present any other evidence on the issue.

¶ 48 Appeal No. 1–15–0812

[13] **[14]** ¶ 49 Although the legal issues raised by Chrysler in appeal number 1–15–0812 are similar to those raised in the Citibank appeal, we are unable to address them, as we lack jurisdiction over this appeal. The Department argues that this Court lacks jurisdiction to consider Chrysler's appeal, because Chrysler failed to file a timely notice of appeal following the circuit court's entry of its March 14, 2014, order resolving Chrysler's challenge to the Department's denial of its claim for a ROTA tax refund. Even if the Department had not raised a jurisdictional challenge, we have a duty

to consider our jurisdiction *sua sponte* and to dismiss if jurisdiction is wanting. *Revolution Portfolio, LLC v. Beale,* 341 Ill.App.3d 1021, 1024–25, 276 Ill.Dec. 141, 793 N.E.2d 900 (2003).

¶ 50 To recap, on March 14, 2014, the circuit court issued its order upholding the Department's denial of Chrysler's claim for a ROTA tax refund. Eight and a half months later, on November 25, 2014, Chrysler filed its section 2–1401 petition. On December 16, 2014, the circuit court issued an order granting the section 2–1401 petition. Thereafter, on March 3, 2015, the circuit court issued its supplemental opinion, which was identical to the March 14, 2014, order, except that it contained a discussion of the ALJ's disregard of the parties' stipulation and a statement that the time for appeal would begin to run from the entry of the supplemental opinion. Chrysler filed its notice of appeal on March 19, 2015.

[15] ¶ 51 In its statement of jurisdiction on appeal, Chrysler claims that it filed its notice of appeal within 30 days of the entry of the March 3, 2015, supplemental opinion, and, therefore, this Court has jurisdiction under Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994), and 303(a)(1) (eff. Jan. 1, 2015). Rule 301 provides that every final judgment of a circuit court in a civil case is appealable as of right. Rule 303(a)(1) requires that the notice of appeal from such orders be filed within 30 days of the entry of the final judgment. To be final, an order must dispose of the parties' rights "either upon the entire controversy or upon such definite and separate part ****144 *356** thereof, such as a claim in a civil case." (Internal quotation marks omitted.) *State Farm Fire & Casualty Co. v. John J. Rickhoff Sheet Metal Co.,* 394 Ill.App.3d 548, 556, 333 Ill.Dec. 158, 914 N.E.2d 577 (2009).

¶ 52 On March 14, 2014, the circuit court issued its order upholding the Department's denial of Chrysler's claim for a ROTA tax refund. This order fully disposed of Chrysler's claim seeking review of the Department's determination that it was not entitled to a refund. Because the court's order resolved all pending claims against all parties in the case, it was a final and appealable order. At that point, Chrysler had four options: file a timely posttrial motion within 30 days, file a timely notice of appeal within 30 days, do nothing and accept defeat, or file a section 2–1401 petition within two years. Chrysler chose the last option, filing its section 2–1401 petition requesting that the circuit court address its argument regarding the ALJ's disregard of the stipulated amount of its claim.

¶ 53 Even so, we still lack jurisdiction to review Chrysler's appeal. The circuit court granted Chrysler's section 2–1401 petition on December 16, 2014. This was a final order resolving that section 2–1401 petition. Chrysler was obligated to file its appeal within 30 days of that date. It did not.

¶ 54 Chrysler cannot rely on the entry of the March 3, 2015, supplemental opinion as the date that triggered its obligation to file a notice of appeal. According to Chrysler, the supplemental opinion was not related to the section 2–1401 petition, but instead was a modification of the circuit court's March 14, 2014, original opinion. This, however, means that the supplemental opinion was entered without authority because it was entered more than 30 days after the March 14, 2014, opinion. *City of Chicago v. Heinrich,* 187 Ill.App.3d 876, 877–78, 135 Ill.Dec. 322, 543 N.E.2d 890 (1989); *Welch v. Ro–Mark, Inc.,* 79 Ill.App.3d 652, 656–57, 34 Ill.Dec. 910, 398 N.E.2d 901 (1979). If the circuit court lacked jurisdiction to enter the supplemental opinion, then we lack jurisdiction to review it. *Keener v. City of Herrin,* 235 Ill.2d 338, 350, 335 Ill.Dec. 888, 919 N.E.2d 913 (2009) ("Because the circuit court had no jurisdiction to enter its order of August 25, 2006, the appellate court had no jurisdiction to review that judgment.").

¶ 55 We further note that the circuit court's inclusion of a statement that the time for appeal began to run as of the date the supplemental opinion has no effect on our analysis. The supreme court rules determine when and how a timely notice of appeal is taken, and the circuit court lacks authority to extend that time. *Meyer v. Blue Cab Co.,* 129 Ill.App.3d 440, 441, 84 Ill.Dec. 737, 472 N.E.2d 874 (1984); see also. Moreover, as discussed above, the trial court lacked jurisdiction to modify the March 14, 2014, opinion after 30 days, thus depriving us of any jurisdiction to review the supplemental opinion. The trial court's statement does not cure the trial court's lack of jurisdiction to enter the supplemental opinion and, accordingly, does not cure our lack of jurisdiction to review it.

¶ 56 Ultimately, no matter how we view it, we lack jurisdiction over Chrysler's appeal. This is fitting, as Chrysler seeks review of only those issues decided by the circuit court in the original opinion, which was issued

over a year before Chrysler filed its notice of appeal. If Chrysler desired to appeal the circuit court's judgment upholding the denial of Chrysler's claim, it should have done so within 30 days of that determination, *i.e.,* by April 14, 2014. Its failure to keep abreast of the status of its case, such that it did not learn of the entry ****145 *357** of the circuit court's March 14, 2014, opinion until six and a half months later does not excuse Chrysler from the duty to file a timely notice of appeal (see *Mitchell v. Fiat–Allis, Inc.,* 158 Ill.2d 143, 150, 198 Ill.Dec. 399, 632 N.E.2d 1010 (1994)). Accordingly, we conclude that we lack jurisdiction to review it, and this appeal must be dismissed.

¶ 57 CONCLUSION

¶ 58 In appeal number 1–13–3650, we affirm the Circuit Court of Cook County's judgment, as we conclude that the assignments from the retailers afforded Citibank standing to pursue a refund of the ROTA taxes attributable to the uncollected debt. Although Chrysler's appeal involves facts similar to those in Citibank's appeal, including assignments from the retailers to Chrysler, we are unable to afford Chrysler any relief from the ALJ's decision in appeal number 1–15–0812, because we lack jurisdiction to address Chrysler's contentions. Accordingly, we dismiss that appeal.

¶ 59 Appeal number 1–13–3650 affirmed.

¶ 60 Appeal number 1–15–0812 dismissed.

Presiding Justice FITZGERALD SMITH and Justice LAVIN concurred in the judgment and opinion.

All Citations

2016 IL App (1st) 133650, 67 N.E.3d 345, 409 Ill.Dec. 133

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Use and Occupation Taxes
Act 120. Retailers' Occupation Tax Act (Refs & Annos)

35 ILCS 120/6d

120/6d. Deduction for uncollectible debt

Effective: July 31, 2015
Currentness

§ 6d. Deduction for uncollectible debt.

(a) A retailer is relieved from liability for any tax that becomes due and payable if the tax is represented by amounts that are found to be worthless or uncollectible, have been charged off as bad debt on the retailer's books and records in accordance with generally accepted accounting principles, and have been claimed as a deduction pursuant to Section 166 of the Internal Revenue Code on the income tax return filed by the retailer. A retailer that has previously paid such a tax may, under rules and regulations adopted by the Department, take as a deduction the amount charged off by the retailer. If these accounts are thereafter, in whole or in part, collected by the retailer, the amount collected shall be included in the first return filed after the collection, and the tax shall be paid with the return.

(b) With respect to the payment of taxes on purchases made through a private-label credit card:

(1) If consumer accounts or receivables are found to be worthless or uncollectible, the retailer may claim a deduction on a return in an amount equal to, or may obtain a refund of, the tax remitted by the retailer on the unpaid balance due if:

(A) the accounts or receivables have been charged off as bad debt on the lender's books and records on or after January 1, 2016;

(B) the accounts or receivables have been claimed as a deduction pursuant to Section 166 of the Internal Revenue Code on the federal income tax return filed by the lender; and

(C) a deduction was not previously claimed and a refund was not previously allowed on that portion of the account or receivable.

(2) If the retailer or the lender subsequently collects, in whole or in part, the accounts or receivables for which a deduction or refund has been granted under paragraph (1), the retailer must include the taxable percentage of the amount collected in the first return filed after the collection and pay the tax on the portion of that amount for which a deduction or refund was granted.

(3) For purposes of the deduction or refund allowable under this Section, the limitations period for claiming the deduction or refund shall be the same as the limitations period set forth in Section 6 of this Act for filing a claim for credit, and shall commence on the date that the account or receivable has been claimed as a bad debt deduction pursuant to Section 166 of the Internal Revenue Code on the federal income tax return filed by the lender, regardless of the date on which the sale of the tangible personal property actually occurred.

(4) The deduction or refund allowed under this Section:

(A) does not apply to credit sale transaction amounts resulting from purchases of titled property;

(B) includes only those credit sale transaction amounts that represent purchases from the retailer whose name or logo appears on the private-label credit card used to make those purchases;

(C) may only be taken by the taxpayer, or its successors, that filed the return and remitted tax on the original sale on which the deduction or refund claim is based; and

(D) includes all credit sale transaction amounts eligible under paragraph (B) that are outstanding with respect to the specific private-label credit card account or receivable at the time the account or receivable is charged off, regardless of the date the credit sale transaction actually occurred.

(5) The retailer and lender shall maintain adequate books, records, or other documentation supporting the charge off of the accounts or receivables for which a deduction was taken or a refund was claimed under this Section. A retailer claiming a deduction or refund for bad debts from purchases made using a private label credit card shall meet the same standard of documentation as a retailer that claims a deduction or refund for bad debts that are from purchases made not using a private label credit card. For purposes of computing the deduction or refund, payments on the accounts or receivables shall be prorated against the amounts outstanding on the account.

(c) For purposes of this Section:

(1) “Retailer” means a person who holds himself or herself out as being engaged (or who habitually engages) in selling tangible personal property at retail with respect to such sales and includes a retailer's affiliates.

(2) “Lender” means a person, or an affiliate, assignee, or transferee of that person, who owns or has owned a private-label credit card account or an interest in a private-label credit card receivable that the person:

(A) purchased directly from a retailer who remitted the tax imposed under this Act;

(B) originated pursuant to that person's contract with the retailer who remitted the tax imposed under this Act; or

(C) acquired from a third party.

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(3) "Private-label credit card" means a charge card or credit card that carries, refers to, or is branded with the name or logo of a retailer and may only be used to make purchases from that retailer or that retailer's affiliates.

(4) "Affiliate" means an entity affiliated under Section 1504 of the Internal Revenue Code, or an entity that would be an affiliate under that Section had the entity been a corporation.

(d) This Section is exempt from the provisions of Section 2-70 of this Act, Section 3-90 of the Use Tax Act, Section 3-55 of the Service Use Tax Act, Section 3-55 of the Service Occupation Tax Act, and any other provision of law that provides that an exemption, credit, or deduction automatically sunsets after a specified period of time after the effective date of the Public Act creating the exemption, credit, or deduction.

Credits
Laws 1933, p. 924, § 6d, added by P.A. 99-217, § 15, eff. July 31, 2015.

35 I.L.C.S. 120/6d, IL ST CH 35 § 120/6d
Current through P.A. 100-19 of the 2017 Reg. Sess.

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CERTIFICATE OF FILING AND SERVICE

I certify that on July 12, 2017, I electronically filed the foregoing **Brief and Appendix of Defendants-Appellants** with the Clerk of the Court for the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are not registered service contacts on the Odyssey eFileIL system, and thus were served by transmitting a copy from my e-mail address to all primary and secondary e-mail addresses of record designated by those participants on July 12, 2017.

Under penalties as provide dby law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

Horwood Marcus & Berk Chartered:
fmarcus@hmblaw.com

Akerman, LLP:
david.otero@akerman.com
peter.larsen@akerman.com
david.blum@akerman.com

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Carolyn Taft Grosboll
SUPREME COURT CLERK

/s/ *Carl J. Elitz*

CARL J. ELITZ
Assistant Attorney General
100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-2109
Primary e-service:
civilappeals@atg.state.il.us
Secondary e-service:
celitz@atg.state.il.us