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.

REPLY BRIEF OF DEFENDANTS-APPELLANTS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ARGUMENT

As Citibank's brief correctly states, the essential facts in this appeal are undisputed. AE Br. 2. Citibank is not a retailer and has never paid Illinois retailer's occupation taxes, yet argues that the Department should have issued it tax refunds or credits pursuant to section 6 of the Retailers' Occupation Tax Act (ROTA or "the Act"), 35 ILCS 120/6 (2016). Citibank's claims are based on the fact that many of its credit card holders defaulted on their credit card debt, and some of that bad debt was incurred by card holders and related to sales taxes due on their purchases. Though Citibank, as a card issuer, never incurred tax or remitted payments to the Department, Citibank filed "amended" retailer's occupation tax returns, R. C46-49, arguing that it was entitled to do so even though it is neither a retailer nor a taxpayer because it accepted assignments of the retail debt from its credit card merchants — *i.e.*, the Illinois retailers who actually made the sales, incurred the tax, and remitted tax to the Department at the time of the sales. AE Br. 9-22. In this way, Citibank sought to recoup the sales taxes previously paid to the Department by its affiliated merchants. *Id.*

Citibank's legal theory for filing amended returns was that its merchants would have been able to obtain the refunds or credits themselves under both section 6 of the Act, 35 ILCS 120/6 (2016), and the Department's bad-debt regulation, 86 Ill. Admin. Code § 130.1960(d), had the sales not been structured using credit cards. *See* AE Br. 5-9. Citibank explained that it

struck a bargain with its merchants to "stand in their shoes" for purposes of collecting tax refunds from the Department, arguing that the Department should respect those agreements because assignments are recognized as an established feature of Illinois law. AE Br. 9-22.

The Department denied Citibank's claim, R. C105-22, determining that Citibank was not entitled to a credit or refund because it was not engaged in selling personal property at retail, did not bear the burden of the tax that is imposed on those who make retail sales by ROTA, and never remitted any tax to the Department, R. C122. Since Citibank never remitted tax, the Department reasoned, it could not have paid tax "in error" under section 6, or receive a credit under the Department's bad-debt regulation, even as an assignee. *Id.* On administrative review, both the circuit court and appellate court agreed with Citibank that it could file amended returns as an assignee of its merchant retailers, reversing the Department. R. C211; *Citibank N.A. v. Ill. Dep't of Revenue*, 2016 IL App (1st) 133650, ¶ 47.

This Court should reinstate the Department's decision because the lower courts have misapprehended the relevant law that allows the Department to grant tax refunds, credits, or deductions only upon an explicit grant of such authority by the General Assembly. Here, the General Assembly has authorized the Department to issue credits or refunds only to "the person who made the erroneous payment," 35 ILCS 120/6 (2016), *i.e.*, the retailer who incurred tax and served the State as its collection agent for the buyer's use tax

obligation. Allowing third-parties to collect tax credits or refunds when they have never incurred any tax or made payments to the Department violates not only the plain language of section 6, but also long-standing public policy that confers such benefits only on Illinois taxpayers who can show that they made an actual payment of tax to the Department.

Granting such credits or refunds is also inconsistent with the General Assembly's recent enactment of section 6d(b) of the Act, 35 ILCS 120/6d(b) (2016). That provision limits the Department's ability to allow deductions or issue refunds not just to anyone who can show it bore the burden of the tax. Instead, with regard to credit card sales, the statute applies to retailers who experienced bad debt only on or after January 1, 2016, and can show that such debt is related sales made on the "private label credit card" variety of charge card. 35 ILCS 120/6d(b)(2016). The bad-debt charge must also be written off either on the retailer's own books and records, or the books and records of its private label credit card provider. *Id.*

I. Because Citibank Is Not a Retailer that Ever Remitted Tax to the Department, It Cannot Seek a Refund Under Section 6 Absent a Valid Assignment of the Retailers' Claims.

Citibank concedes that it has no right to seek a direct refund from the Department under section 6. It acknowledges that this Court, in *Snyderman v. Isaacs*, 31 Ill. 2d 192 (1964), held that a putative "taxpayer" that never actually incurred or remitted tax to the Department could not bring a refund claim under what is now section 6, even though that plaintiff claimed to have

"borne the burden" of the tax — as Citibank does here. *See* AE Br. 16. Citibank also recognizes that the lower courts did not address the issue of its standing under section 6 (absent an assignment) in reversing the Department. AE Br. 3. It thus refers to the possibility of it receiving a refund or credit directly under section 6 of the Act as a "moot issue," *id.*, and "not the issue in this appeal," AE. Br. 14.

In the introduction of its Argument section, however, Citibank states, without offering any rationale or support, that it is entitled to seek a "direct refund under 35 ILCS 120/6," and that this is an "independent" reason why it should prevail. AE Br. 2. It never follows up on this contention or offers support for this point as an alternative ground for affirming the lower courts, which never addressed the issue. *See Citibank, N.A.*, 2016 IL App (1st) 133650, ¶ 31 ("We need not address the Department's contention that only retailers that remit the taxes have standing to pursue a refund . . . [where] the retailers . . . effectively assigned their rights. . . to Citibank"). Nor does Citibank distinguish *Snyderman*. The question of Citibank's right to receive a refund under section 6 of the Act without the benefit of an assignment from its merchants is therefore forfeited. *People ex rel. Ill. Dep't of Labor v. E.R.H. Enters.*, 2013 IL 115106, ¶ 56 (point not argued or supported by citation to relevant authority fails to satisfy the requirements of Supreme Court Rule 341(h)(7)); *Vancura v. Katris*, 238 Ill.2d 352, 370 (2010) (both argument and citation to relevant authority required to preserve issue). Instead, as Citibank

later acknowledges, "this appeal centers around the assignment issue only." AE Br. 3.

II. Illinois Law and Public Policy Embodied in Section 6 and 6d(b) of the Act Preclude Citibank from Filing a Credit or Refund Claim as an Assignee of Its Retail Merchants.

A. Citibank's Arguments Misconstrue the Basis of the ROTA Tax and the Statutory Right of Retailers to Seek a Refund or Credit Pursuant to Section 6.

It is well settled that the obligation of a citizen to pay tax is purely one of statutory creation. *People v. Lindheimer*, 371 Ill. 367, 371 (1939). Conversely, once a tax has been incurred and voluntarily paid, the Department's obligation to issue a credit or refund arises only from the direction of the legislature, which has authority to allow such refunds or condition them "as a matter of statutory grace." *Scoa Indus., Inc. v. Howlett*, 33 Ill. App. 3d 90, 96 (1st Dist. 1975) (citing *Weil-McLain Co. v. Collins*, 395 Ill. 503, 507 (1947)); *see also Alvarez v. Pappas*, 374 Ill. App. 3d 39, 48 (1st Dist. 2007), *aff'd*, 229 Ill. 2d 217 (2008).

As explained in the Department's opening brief, AT Br. 12-14, the ROTA tax created by section 1 of the Act provides that tax is assessed on the "total selling price" of every retail sale, 35 ILCS 105/3-10 (2016), measured by the merchant's "gross receipts," 35 ILCS 120/2-10 (2016), defined by the General Assembly as "the consideration for a sale valued in money whether received in money or otherwise, including cash [or] credits." 35 ILCS 120/1 (2016). The tax is thus imposed at the time of the sale regardless of whether

the sale is for cash or credit and regardless of whether the buyer ultimately makes good on its payment obligation. *See* AT Br. 14. The tax is also collected pursuant to the Use Tax Act because the retailer's tax payments are meant not only to cover its own obligation under ROTA, but also the purchaser's use tax that arises independently at the same time as the sale under the Use Tax Act. *See* AT Br. 14 (citing 35 ILCS 105/3 (2016)). Use tax is imposed based on "the exercise by any person of any right or power over tangible personal property incident to the ownership of that property." 35 ILCS 105/2 (2016) ("use" defined). This also occurs whether the buyer pays or defaults on its purchase obligations.

Despite its statement that there "does not appear to be any dispute as to the operation of these statutes," AE Br. 5, nearly all of Citibank's representations regarding how the Illinois tax system works with respect to bad-debt expense are wrong. Without citation or even acknowledgment of the relevant statutory provisions, Citibank portrays the retailers' tax as a tax on the *net* value of a retail sale, as measured by the money actually collected from the purchaser. AE Br. 6-7. In this way, Citibank characterizes section 6 as something akin to an accounting provision designed to correct the "excess ROTA tax" paid to the Department on "purchase prices that were never fully paid by the retail purchasers." AE Br. 1. Citibank thus sees the validity of the tax imposed on its retail merchants as dependent on subsequent events related to the credit card payments made by its card holders, with the Department's

collecting of the tax from retailers at the time of a sale only for "ease of administration and reporting," and in anticipation of the payment of the "expected purchase price" being received. AE Br. 6. Further, Citibank ignores the purchaser's use tax obligation that arises from taking ownership of the transferred property, incorrectly concluding that "[t]he foundation of Illinois' sales tax system . . . is that sales tax is imposed on the price that the purchaser actually pays for the item." AE Br. 7 (emphasis in original).

Instead of clarifying the parties' dispute, Citibank's representations sow confusion. The refund and credit procedures authorized by section 6 and the Department's bad-debt regulation represent not an unwinding of the sales taxes that were paid at the time of a sale by mistake. The tax paid was due at that time under section 1 of the Act and under section 2 of the Use Tax Act. Instead, in the bad-debt context, Illinois courts recognize section 6 as "special remedial statute," designed to alleviate the hardship imposed on retailers who serve the State as collection agents and remit sales taxes, but later find themselves unable to receive payment from their customers. *Peoples Store of Roseland v. McKibbin*, 379 Ill. 148, 152 (1942). That is why the Department's regulation provides that a tax paid only "becomes" one paid in error upon the retailer recognizing bad debt on the receivable, and not at some earlier time, such as when the assessment occurred. 86 Ill. Admin. Code § 130.1960(d). Up until the time that bad debt is recognized on a retailer's books and records, the tax paid is not treated as having been paid "in error" under section 6.

Because section 6, when applied to bad-debt expense, is meant to create a statutory benefit only as a matter of legislative grace, *see, e.g., Weil-McLain Co.*, 395 Ill. at 507, the statute and Department regulations must be read narrowly. And for this reason, and as explained more fully below, the Department has consistently interpreted the language of section 6, 35 ILCS 120/6 (2016), and its bad-debt regulation, 86 Ill. Admin. Code § 130.1960(d)(3), as providing for a refund only to retailers who incurred and remitted tax to the Department, and no one else. As described in Section II.B below, the question presented by this appeal is thus whether, as Citibank contends, the Department has misinterpreted section 6 because the General Assembly intended to allow third-party creditors to obtain tax credits or refunds as assignees, or whether the Department is correct, and section 6 should be construed as a special remedy provided exclusively for retailers who have incurred and paid retailers' tax and who can show that they subsequently suffered bad debt as a result. This appeal also concerns, as described in section II.C below, whether the General Assembly has clarified, by passing section 6d(b) of the Act, that bad-debt expense related to credit card sales may not serve as the basis for sales tax relief unless the debt was written off on or after January 1, 2016, and was incurred in connection with a "private label credit card" sale either on the retailer's own books and records or its private label credit card provider's books and records.

B. Assignments May Not Be Used to Expand the General Assembly's Intended Class of Statutory Beneficiaries.

As the appellate court recognized, the parties do not quibble over the law generally governing assignments. *Citibank*, 2016 IL App (1st) 133650, ¶ 32. Assignments are generally recognized as valid by Illinois courts, *Kleinwort Benson N. Am., Inc. v. Quantum Fin. Servs., Inc.*, 181 Ill. 2d 214, 225 (1998), consistent with the national trend, *see*, *e.g.*, *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 275 (2008) ("Assignees of a claim, including assignees for collection, have long been permitted to bring suit."). But the general law of assignments does not change the tax rule that the burden of proof is always on the taxpayer to establish its entitlement under the law to either an exemption from a particular tax, *Telco Leasing, Inc. v. Allphin*, 63 Ill.2d 305, 310 (1976), or, as here, deductions or credits provided by a statutory provision, *Balla v. Dep't of Revenue*, 96 Ill. App. 3d 293, 295 (1st Dist. 1981). Statutes granting such privileges are "strictly construed in favor of taxation," and courts allow relief from taxes paid by a claimant only if "clearly allowed by statute." *Bodine Elec. Co. v. Allphin*, 81 Ill. 2d 502, 513 (1980).

Here, section 6 of the Act provides that the Department shall issue a refund or credit 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." 35 ILCS 120/6 (2016). Citibank does not fall within either of these statutorily identified groups. And, though the Act provides explicitly

that "credit memoranda" issued by the Department to retail merchants proving their entitlement to a refund are assignable, Citibank is not seeking the assignment of a credit memorandum, but of a refund or credit claim under section 6. Even if Citibank were entitled to have its claim treated in the same way as a credit memorandum, retailers may assign such memoranda under the provisions of section 6 only to persons "subject to" various identified tax statutes — essentially other retailers. Citibank, whose business is to act as a commercial lender and not an Illinois retailer, does not fall within the class of statutorily authorized assignees. *See* 35 ILCS 120/6 (2016) (allowing assignment of credit memoranda to those subject to "this [Retailers' Occupation Tax] Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act.").

Even outside the taxation arena, this Court has made clear that the right to assign claims must be considered within the context in which those claims arise. *E.g.*, *BHI Corp. v. Litgen Concrete Cutting & Coring Co.*, 214 Ill. 2d 356, 361 (2005) ("[T]hough property damage claims generally are assignable in Illinois, the assignments here must be considered in the context of the settlement agreements."). Statutory requirements may not be avoided

by contracting parties merely by assigning a claim from one party to another. *Dubina v. Mesirow Realty Dev., Inc.*, 197 Ill. 2d 185, 196 (2001) (assigning parties may not "accomplish indirectly that which they could not do directly.").

Here, the General Assembly has specified in section 6 to whom the Department may issue a refund or tax credit. 35 ILCS 120/6 (2016). And *Snyderman* makes clear that the language of the Act limiting the permissible recipients of a credit or refund arises from the public policy of the State to strictly limit the class of persons who may make demands for payment on the Department: "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 the Retailers' Occupation Tax Act that *the only person entitled to receive a credit is the remitter of the tax.*" *Snyderman*, 31 Ill. 2d at 196 (emphasis added).

Citibank never remitted tax to the Department, but argues that it is enough that it "bore the burden of the tax" by extending credit to the retail buyers. AE Br. 25. But even if the language of the Act did not prohibit the Department from issuing a refund or credit to third-party lenders (which it does), Citibank cannot show even that it bore the burden of the tax because its business is not to sell goods at retail, as the Department determined. R. C114. Although the Department stipulated that Citibank bore the burden of its "defaulted accounts" by writing them off, R. C38, it has never conceded that Citibank bore the burden of the particular tax payments at issue in this appeal.

Instead, as pointed out in the Department's opening brief, Citibank's ownership of what would have just been "debt" in the hands of the merchants has been converted into third-party "credit card debt," allowing Citibank to assess revolving interest charges on purchasers, late payments and membership fees, and other types of charges, and to extract discounts from the retailers for facilitating payment. *See* AT Br. 21-22. These revenue sources compensate Citibank in ways retailers are not generally able to obtain, meaning that Citibank bears a different kind of risk burden as a commercial lender than its merchants do when they elect to extend credit to purchasers directly. *Id.*

Citibank relies heavily on *Nudelman ex rel. Stone*, 376 Ill. 535, 540 (1940), where the Department was ordered to recognize the assignment of one of its credit memoranda in favor of a retail merchant that had purchased it with the intent of paying down its own tax obligation. AE Br. 12-13, 22. But far from undermining the Department's point that the statute is strictly construed in favor of retail merchants who pay and remit tax, *Nudelman* makes that point. In *Nudelman*, a retailer assigned a credit memorandum it had obtained from the Department to another retailer. The assignment was necessary because the assignor had stopped its retail activity, and so could not benefit from the credit where it no longer had any sales tax obligations to pay. *Id.* at 537-38.

In considering whether the credit memorandum could be assigned between two such taxpayers, the court observed that once the right to receive a credit is established by a qualifying merchant, the General Assembly intended him to have the actual benefit of that credit: "It will be noted . . . that section 6 provides not only for the issuance of a credit memorandum, but in case such is of no value to the holder, he is entitled to and may require the refund of the tax." *Id.* at 537-38. Because the original owner of the credit memorandum could not benefit from it after having ceased business, and because it was clear he could have demanded a cash refund from the Department under section 6 of the statute, the court concluded that a credit memorandum in the hands of one retail taxpayer should be assignable to other retail taxpayers, as if it were any other transferrable "asset" of the retailer's business. *Id.* at 538.

Thus, the assignment in *Nudelman* did not foster an end-run around section 6 by conveying a statutory benefit on a non-retailer, as Citibank attempts to do here. Rather, the assignment in *Nudelman* was consistent with section 6 because it promoted the Act's policy of benefitting the retail merchant who incurred tax and remitted it to the Department, and who could show that he was entitled to a refund under section 6.

Citibank argues that the Department's opening brief focuses only on whether Citibank could bring a direct refund claim under section 6, without addressing the basis of the lower courts' decisions, each holding that Citibank can bring claims as an "assignee" of its member merchants. AT Br. 3, 5, 10,

14. Not so. Citibank misunderstands (or misrepresents) the Department's argument. When the Department argues that Citibank has no "standing" to bring a refund or credit claim under section 6, AT Br. 15-23, it means that Citibank is statutorily *ineligible* to make such a claim, whether directly under section 6, or as an assignee of someone who has such rights.

Citibank ignores (and so also fails to distinguish) more than a dozen cases cited by the Department showing that courts around the country have overwhelmingly rejected the same arguments Citibank advances here. *See* AT Br. 18-20 (citing cases); *e.g.*, *Citifinancial Retail Srvs. Div. of Citicorp Tr. Bank, FSB v. Weiss*, 271 S.W.3d 494, 498 (Ark. 2008) ("The majority of states that have addressed this issue have strictly construed bad-debt statutes to find that the plain meaning of a tax statute prevails over general assignment principles unless there is an express provision that permits an assignment and grants an assignee the benefit of the tax credit."); *State Dept. of Revenue v. Wells Fargo Fin. Acceptance Ala., Inc.*, 19 So. 3d 892, 897 (Ala. Civ. App. 2008) (rejecting assignment argument and collecting cases); *DaimlerChrysler Servs. N. Am., LLC v. Az. Dep't of Revenue*, 110 P.3d 1031, 1038 (Az. Ct. App. 2005) ("In the face of case law that requires us to narrowly construe tax deductions, we decline to apply general principles of assignment law to expand those rights."); *DaimlerChrysler Servs. N. Amer., L.L.C. v. State Tax Assessor*, 817 A.2d 862, (Me. 2003) ("We agree with the Tennessee Court of Appeals that principles governing the interpretation of tax credit and exemption statutes

should overcome more general assignment law"). Indeed, at least one of the cases cited by the Department involved Citibank itself. *Citibank (S. Dakota), N.A. v. Graham*, 315 Ga. App. 120 (2012). In that case, the court stated concisely that, "because Citibank does not remit sales taxes to the Department or file sales tax returns in Georgia, it cannot utilize this deduction." *Id.* at 121.

Citibank does cite one case for the proposition that "[o]ther states' courts have recognized that refund claims are assignable as well." AE Br. 12 (citing *Slater Corp. v. S.C. Tax Comm'n*, 280 S.C. 584 (Ct. App. S.C. 1984)). But, as with *Nudelman*, *Slater Corp*. is distinguishable. In *Slater Corp.*, a food service vendor and buyer of supplies mistakenly paid use taxes on the price of those supplies to various vendors, who remitted the tax to state authorities, even though Slater was a wholesaler, and so no taxes were ever due. *Id.* at 586. An assignment from the vendors to Slater was made for the purpose of allowing it to recover the taxes from the State, leading the South Carolina appellate court to allow those assignments. *Id.* Here, unlike in *Slater Corp.*, Citibank was never a purchaser of the goods that were sold and taxed. Thus, as the Supreme Court of Kansas noted in distinguishing *Slater Corp.*, "[b]ecause the assignment in [*Slater Corp.*] was from the retailer that collected and remitted the sales tax to the purchaser that paid the sales tax, *Slater Corp.* is factually distinguishable from the present case." *In re Appeal of Ford Motor Credit Co. from Denial of Refund of Kansas Retailers' Sales Tax, Dated March 31, 2000*, 275 Kan. 857, 867 (2003). The Kansas court then joined the many

other state courts that have refused to allow third-party lenders like Citibank to claim tax credits or refunds as "assignees" of actual taxpayers. *Id.* at 870-71.

C. Section 6d(b) of the Act Is Inconsistent with Citibank's Assignment Claim Because the Bad Debt at Issue Was Not Recorded on a Private Label Credit Card Provider's Books on or after January 1, 2016.

Additionally, Citibank cannot seek a refund from the Department as an assignee of its affiliated merchants because such an assignment would violate the legislative intent of recently enacted section 6d(b) of the Act. 35 ILCS 120/6d(b) (2016). That provision provides relief from tax liability to retailers for their bad-debt expenses related only to "private label credit card" debt charged off on their own books and records or when the writeoff has been recognized on the credit card provider's books and records. 35 ILCS 120/6d(b) (2016). A "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." 35 ILCS 120/6d(c)(3) (2016). Retailers are also required to show that the bad-debt relief they seek is related to charges made on their own or lender's books and records after the time "beginning January 1, 2016." 35 ILCS 120/(b)(1)(A) (2016).

In construing a new statutory enactment, the General Assembly is presumed to know the existing law, *Gaither v. Lager*, 2 Ill.2d 293, 301 (1954), including the body of law governing administrative regulations, *Citizens Utils.*

Co. of Ill. v. Ill. Pollution Control Bd., 133 Ill. App. 3d 406, 409 (3d Dist. 1985); *see also Jacobson v. Gen. Fin. Corp.*, 227 Ill. App. 3d 1089, 1098 (2d Dist. 1992). Here, the Department has never allowed retailers or third-party lenders to seek credits or refunds under either section 6 or its bad-debt regulations for charged-off debt appearing on the books and records of anyone other than retail merchant itself. Section 6d(b) therefore represents the General Assembly's deliberately crafted expansion of the existing law in favor of retail merchants by allowing them an additional way of securing tax relief in the credit card context — provided they can meet the statutory requirements.

Citibank argues, incorrectly, that "[o]ne thing that is clear from the amendment is that the legislature is continuing its policy of refunding excess sales tax in all credit sales so that the proper amount of sales tax is ultimately retained when bad debt occurs." AE Br. 21. This is not so. The General Assembly limited the refunding of taxes paid in third-party credit card transactions to "private label" credit cards. 35 ILCS 120/6d(c)(3) (2016). This benefit likely developed because these cards, which represent a small fraction of the credit card industry, are often issued by brick-and-mortar retailers who pay substantial Illinois tax, and who have shown a mounting need in recent time for economic relief from their defaulting card holders. *See Michael* Corkery & Jessica Siler-Greenberg, *Profits From Store-Branded Credit Cards Hide Depth of Retailers' Troubles*, N.Y. Times, May 11, 2017 (available at http://nyti.ms/2wL1tli (Sept. 11, 2017)); Tara Siegel Bernard, *Losses Mount on*

Credit Cards for Retailers, N.Y. Times, Feb. 9, 2009 (available at http://nyti.ms/2wMIsxr (Sept. 11, 2017)).

But regardless of the General Assembly's motives, section 6d(b) establishes that the legislature is authorized to condition remedial tax refunds, credits, and deductions in ways that it perceives best benefit the State and its citizens. Merely "bearing the burden" of the original tax that resulted in a bad-debt expense is not enough to allow a refund under ROTA.

Citibank suggests that the new legislation should be viewed as proof that the General Assembly has endorsed the circuit court's view that assigned claims for credits or refunds should be permitted. AE Br. 21-22. It reasons that this is so because the new legislation did not expressly reject the circuit court's decision, and because the legislation was crafted "at a time when the circuit court had already ruled that Citibank was entitled to its refund claim as the assignee of the retailers[,] and when the case was pending before the [appellate] court." AE Br. 21-22. Citibank's assumption that the General Assembly intended to endorse the circuit court's decision ignores the legislature's failure to expressly adopt the circuit court's reasoning allowing assignments for these credit and refunds. The argument also overlooks that, at the time section 6d(b) was passed, the circuit court was split on the assignment question. Though the circuit court in this case ruled against the Department and in favor of allowing Citibank's assignment claim, the circuit court in another case (consolidated with it on appeal), *Chrysler Fin. Servs.*

Ams., LLC v. Ill. Dep't of Revenue, No. 1-15-0812, ruled the opposite way, in the Department's favor, and denied Chrysler's right to seek a refund as the assignee of a taxpayer, *see Citibank*, 2016 IL App (1st) 133650, ¶ 58 (petition for leave to appeal in *Chrysler* currently pending, No. 121671).[*] Thus, to the extent that the litigation in the circuit courts indicates what the General Assembly intended in enacting section 6d(b), the only logical conclusion is that the General Assembly intended to settle the law on a question that had divided the circuit court, and that the legislature did so by making clear in the new statutory provision which types of tax-relief claims can be brought to the Department.

Nonetheless, that a statute like section 6 has remained substantively unaltered through successive sessions of the General Assembly indicates legislative acquiescence in the contemporary and continuous administrative interpretation given to the law by the agency charged with its interpretation. *People ex rel. Birkett v. City of Chi.*, 202 Ill. 2d 36, 53 (2002); *People ex rel. Spiegel v. Lyons*, 1 Ill.2d 409, 414 (1953). The Department has never allowed third parties to bring "assigned" credit or refund claims pursuant to section 6, suggesting that section 6d(b) does not allow for assigned claims either.

And here, now that the General Assembly has made clear what a retailer must do to establish its entitlement to relief related to bad-debt

[*] Because the appellate court ruled for the Department in *Chrysler* on jurisdictional grounds, it never reached the assignment question.

expense from taxes on credit card sales, Citibank cannot prevail on its assignment theory. To allow it to do so would be to violate the general law of assignments, which provides an assignee can have no greater rights than those possessed by its assignor. *Guillen ex rel. Guillen v. Potomac Ins. Co. of Ill.*, 203 Ill. 2d 141, 158 (2003); *Ruva v. Mente*, 143 Ill. 2d 257, 270 (1991). Thus, because Citibank's merchants could not seek a refund for this credit card debt that was written off before the statutory start date under section 6d(b) of January 1, 2016, and which was not of the "private label credit card" variety, neither can Citibank. Accordingly, both the language and public policies of section 6 preclude Citibank from accepting an assignment, as argued above, and the enactment of section 6d(b) does as well. The lower courts' decisions should be reversed for this reason too, with the Department's denial of Citibank's claim for a tax credit or refund affirmed.

CONCLUSION

For all the above reasons, and those argued in the Department's opening brief, the Illinois Department of Revenue and its Director request that this Court reverse the decisions of the lower courts, and affirm the decision of the Department.

September 11, 2017

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rule 315(d) and Rule 341(a). The length of this reply 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 petition under Rule 342(a), is 5,317 words.

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CERTIFICATE OF FILING AND SERVICE

I certify that on September 11, 2017, I electronically filed the foregoing **Reply Brief of Defendants-Appellants** with the Clerk of the Court for the Supreme Court of Illinois by using the 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 on Septembe 11, 2017, designated by those participants.

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.

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