



## INSIGHTS & COMMENTARY

Jurisdiction: Illinois  
Tax Type: Retailers' Occupation Tax  
Issue: Illinois Court Issues Ruling in Bad Debt Claim Sought by Finance Company  
Date: November 10, 2016

### SYNOPSIS:

On November 2, 2016, the Illinois Appellate Court held that a finance company was entitled to a refund of Retailers' Occupation Tax associated with uncollectible debt on credit and installment contracts. The refund claim was originally filed by the finance company with the Illinois Department of Revenue. The claim was denied by the Department for, among other reasons, they did not bear the burden of the tax, they were not the remitter of the tax to the State, and the assignments from the retailers did not give the finance company a right to the refund.

In this case, retailers involved in the sales at issue provided their customers with the option to finance their purchases, including applicable taxes, on a credit basis. The tax was then remitted to the state by the retailer. Through agreements with the retailers, the finance company would acquire the consumer charge accounts and receivables from the retailers on a non-recourse basis. Under the agreements, the finance company acquired all rights related to the accounts, including the right to all payments from the consumers and the right to claim refunds or credits of Retailers' Occupation Tax.

When consumers defaulted, leaving unpaid balances that included amounts attributable to the financed Retailers' Occupation Tax, the finance company wrote the balances off on its books and records and claimed the balances as bad debt for federal income tax purposes. They then sought a refund of the portion of the tax attributed to the unpaid and written off balances of the defaulted accounts.

After the Department's denial of the refund claim, the finance company appealed the decision to the Circuit Court. The Circuit Court issued an order reversing the Department's denial of the claim, concluding that the primary issue was whether the finance company 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. The Department then filed a notice of appeal and on November 2, 2016 the Appellate Court affirmed the Circuit Court's judgement in favor of the finance company.

### INSIGHT:

For years, the Illinois Department of Revenue has denied finance companies and third-party creditors the ability to claim a refund of Retailers' Occupation Tax on bad debt primarily due to the fact that they were not the party who remitted the tax to the state and the rights to the refund could not be assigned by the retailer. This ruling is an important win and results in a significant opportunity for finance companies working with Illinois retailers.

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