ILLINOIS INDEPENDENT

TAX TRIBUNAL

MOTOR WERKS OF HOFFMAN ESTATES, INC., Petitioner,	)	
v.	)	14 TT 222 (along with 16 TT 158) Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	

MOTOR WERKS OF BARRINGTON, INC., Petitioner,	)	
v.	)	15 TT 37 (along with 16 TT 159) Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	

ORDER ON PARTIAL SUMMARY JUDGMENT MOTIONS

Motor Werks of Hoffman Estates, Inc. (MWH) and Motor Werks of Barrington, Inc. (MWB) (collectively Motor Werks) are challenging various Notices of Tax Liability for Illinois sales tax issued by the Department for multiple tax periods between 2003 and 2010 totaling approximately $5,111,603 in taxes,

interest, and penalties. The Notices were issued as a result of separate and successive audits conducted at each business. Because the cases involve similar issues, they were consolidated for purposes of proceedings before the Tax Tribunal. The issues in the present partial summary judgment motions relate to the treatment of trade-in credits and advance trade credits claimed by these two car dealerships that were disallowed by the Department following the initial audit cycle at each dealership.

In its motion, Motor Werks argues that 1) it is entitled to certain disallowed trade-in credits and advance trade credits; 2) a Department regulation relating to those two credits, 86 Ill. Adm. Code 130.455, impermissibly narrows the scope of the underlying trade-in statute; 3) the Department's audit sampling methodology was flawed as files missing documentation were excluded from the sampled population; 4) the Tax Tribunal should apply a ruling of the Department's internal administrative law court (11-ST-0097) in the present case of MWH regarding the treatment of loaner cars; and 5) the penalties assessed against Motor Werks should be abated.

The Department, in turn, argues that 1) certain audit determinations disallowing trade-in credits and advance trade credits were properly made pursuant to 86 Ill. Adm. Code 130.455; 2) 86 Ill. Adm. Code 130.455 is a reasonable regulation issued by the Department; 3) its audit sampling methodology which excluded files that had no supporting documentation was appropriate; 4) the Tax Tribunal should not apply the Department's internal ruling on loaner cars in the present case; and 5) Motor Werks is not entitled to any penalty relief.

In its Reply, Motor Werks withdrew its issue which raised questions about the auditor's sampling methodology.

As explained below, Motor Werks summary judgment motion is denied and the Department's summary judgment motion is granted.

1. Background

Illinois Sales Tax

The Illinois Retailers' Occupation Tax Act imposes a tax (ROT) upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax (UT) upon the privilege of using in this State tangible personal

property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. Taken together, those taxes comprise "sales tax" in Illinois.

Illinois Sales Tax (applicable to Automobile Transactions)

Statutes

The Retailers' Occupation Tax Act, 35 ILCS 120/1, effective for years prior to 2015, states, in part:

> "Selling price" or the "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, …

The Use Tax Act, 35 ILCS 105/2, effective for years prior to 2015, states, in part:

> "Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold...

The Department's Trade-In Regulation

The Department's Regulation on motor vehicle trade-in allowances, 86 Ill. Adm. Code 130.455, effective during the audit period in question,[1] provides, in part:

[1] Illinois changed the manner in which sales tax applies to leases of vehicles which changed the treatment of advance trade credits in car lease transactions for tax years beginning January 1, 2015. Any ruling in this case on advance trade credits will have little application to taxpayers for tax year 2015 and going forward. *See* Illinois Public Act 098-0628.

a) Definitions

Advance Trade Credit means a trade-in credit earned as the result of the trade-in of a vehicle on the future purchase of a vehicle where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

Dealer means any person engaged in the business of selling vehicles at retail.

Dealer Credit means an advance trade credit maintained on the books of the dealer where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

Lease means a true lease of a vehicle for a term of more than one year.

Lessee means any person that acquires possession of a vehicle pursuant to a lease.

Lessor means any person engaged in the business of leasing vehicles to other persons.

Purchaser means any person, whether an individual consumer or a lessor, that purchases a vehicle from a dealer.

b) Valuation of Traded-in Vehicles

1) The selling price of a vehicle does not include *the value of or credit given* for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold. *The value of* a traded-in vehicle is the amount of value assigned to the vehicle without regard for outstanding debt owed on the traded-in vehicle by any party. (Section 1 of the Act)

2) The amount of *credit given* for a traded-in vehicle is the value assigned to the vehicle, reduced by any cash payments received by the purchaser or title holder of the traded-in vehicle. The reduction of the value by offsetting cash payments results in the actual *credit given* for the traded-in vehicle. Where cash payment is made to the purchaser or the title holder of the traded-in vehicle, the trade-in credit is equal to the actual *credit given* for the vehicle. (Section 1 of the Act)

Example:

	Value of Trade-In	Credit Given	Trade-In Credit
Trade-In Vehicle	$10,000		$10,000
With $3,000 Lien	$10,000		$10,000
With $2,000 Cash Back to Purchaser	$10,000	$8,000	$8,000

c) Use of Trade-in Credits

1) A dealer may reduce his gross receipts by the *value of or credit given* for a traded-in motor vehicle where: (Section 1 of the Act)

A) An individual trades a motor vehicle he owns on the purchase of a new or used motor vehicle;

B) A lessor trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease;

C) A lessor or other purchaser trades a motor vehicle owned by a prospective lessee or a third party where the prospective lessee or third party assigns the vehicle to the dealer and provides written authorization for the trade to the dealer, for the benefit of the lessor or other purchaser. The written authorization provided by the prospective lessee or third party should be specific to the immediate transaction, identifying the vehicle to be purchased by the lessor or other purchaser. A prospective lessee or third party trade-in authorization may not be used in conjunction with an advance trade transaction; or

D) A motor vehicle is traded-in as described in subsection (c)(1)(B) or (c)(1)(C) of this Section, and the dealer executes the lease but assigns the lease to a purchasing lessor, if the following requirements are part of the transaction:

i) the lease agreement states that the lease and vehicle will be assigned to the lessor making the trade of the motor vehicle, and

ii) title is issued directly to the lessor making the trade of the motor vehicle and not to the dealer so that the dealer remains outside the chain of title.

2) A dealer may not reduce his gross receipts by the *value of or credit given* for a traded-in motor vehicle where: (Section 1 of the Act)

A) The dealer is the owner (meaning the dealer holds either title or certificate of origin) of the traded-in motor vehicle;

B) The trade-in vehicle was disposed of in a sales transaction predating the trade but was not identified by contract or written agreement as an advance trade-in vehicle as required in subsection (d) of this Section; or

C) The party holding title and offering the vehicle or vehicles for trade on behalf of another purchaser or lessor, as described in subsection (c)(1)(C) of this Section, would not be entitled to the isolated or occasional sale exemption if such vehicle or vehicles were sold by that party, rather than traded.

d) Advance Trade-Ins

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

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

2) Advance trade-in credit given by the dealer to the purchaser in the amount of the *value of or credit given* for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash, and will not affect the purchaser's ability to apply

the advance trade credit toward the purchase of one or more vehicles, so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a vehicle or vehicles purchased. (Section 1 of the Act)

…

f) Multiple and Split Trade-in Transactions

1) Multiple Trade-In Transactions

A purchaser may utilize a trade-in credit when trading in more than one vehicle to a dealer on the purchase of a single new or used vehicle. The dealer may use the cumulative trade-in credits from the traded-in vehicles to reduce gross receipts from the sale of the newly purchased vehicle so long as the trade-ins and sale are recorded as a single transaction.

2) Split Trade-In Transactions

A purchaser may utilize a trade-in credit when trading in a single vehicle to a dealer on the purchase of more than one new vehicle. The dealer may split the amount of the trade-in credit from the traded-in vehicle, and apply it toward the purchase price of one or more new vehicles so long as the trade-in and purchases are recorded as a single transaction. The amount of trade-in credit to be applied to each new vehicle will be determined by the dealer and purchaser.

3) Combined Transactions

A multiple trade-in transaction or split trade-in transaction may only be used in conjunction with an advance trade-in transaction if the transfer of all vehicles involved in the trade are recorded as a single transaction and the purchaser is contractually obligated to purchase a vehicle from the dealer within the specified period of time.

…

2. Analysis

Summary judgment is proper when "the pleadings, depositions and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Performance Marketing Assoc., Inc. v Hamer*, 2013 IL 11496, ¶12 (2013) (quoting 735 ILCS 5/2-1005(c) (2010)). In the present case, Motor Werks filed a Motion for Partial Summary Judgment, the Department filed a Cross-Motion for Summary Judgment and Response to the Motor Werks' Motion for Summary Judgment, and Motor Werks filed a Reply Brief. When both parties file motions for summary judgment, they agree that no material facts are in dispute and invite a decision as a matter of law. *Irwin Indus. Tool Co. v. Ill. Dep't of Revenue*, 238 Ill. 2d 332, 340 (2010).

At this juncture, the findings contained in the Notices of Tax Liability issued by the Department are considered to *prima facie* correct and are *prima facie* evidence that the amount of tax, interest and penalties on those notices are correct. *See Copilevitz v. Dep't of Revenue*, 41 Ill. 2d. 154, 156-157 (1968).

A. Disallowed Trade-In and Advance Trade-In Credits

In its present motion, Motor Werks identified two subcategories of trade-in transactions that were disallowed by the Department. First, Motor Werks claims the Department erroneously reduced certain trade-in credits by the amounts of cash payments made to purchasers in connection with trade-ins of vehicles, Pet'r Mem. in Support of Mot. for Partial Summ. J. at pp. 15-16, and, second, the Department refused to accept multiple trade-in credits claimed in transactions which also involved advance trade-in credits. *Id*. at pp. 4-7.[2]

I. Cash Payments

For certain vehicle transactions, Motor Werks would provide a purchaser of a vehicle cash back during a trade-in transaction. Motor Werks treated the cash back portion of the transaction as part of the overall trade-in credit it claimed on its sales tax returns. According to Motor Werks, 86 Ill. Adm. Code 130.455 allows such

[2] Motor Werks also advanced an argument in its motion that trade-in credits regarding certain autos purchased at auction had been improperly rejected by the Department, but in its Reply, Motor Werks withdrew its argument, subject to the general trade-in arguments in has made, based on the Department's representation that it did not reject trade-in credits solely based on auction transactions.

treatment as it states that a motor vehicle dealer "may reduce his gross receipts by the value of or the credit given" for a traded-in motor vehicle under subsection (c)(1) of the regulation. While Motor Werks acknowledges that the term "credit given" as defined in subsection (b)(2) of that regulation is defined to be "the value assigned to the vehicle, reduced by any cash payment received by the purchaser or title holder of the traded-in vehicle," Motor Werks argues the term "value of" a trade-in credit should not be reduced by cash payments as section (d)(2) of the regulation states "Advance trade-in credit given by the dealer to the purchaser in the amount of the *value of or credit given* for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash..."

The Department disallowed the cash back portion of claimed trade-in credits. It argues that its trade-in regulation explicitly states in subsection (b)(2) that trade-in credit equals that actual credit given for a vehicle.

"The fundamental rule of statutory interpretation is to determine and give effect to the intent of the legislature, and the statutory language is the best indicator of the legislature's intent." *Quality Saw & Seal, Inc. v. Illinois Commerce Com'n,* 374 Ill. App. 3d 776, 781 (2nd Dist. 2007). "The best indication of legislative intent is the statutory language, given its plain and ordinary meaning." *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101, 106 (2005). "Where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction." *Id*. The familiar rules of statutory construction apply with equal force to administrative regulations. *Kean v. Wal-Mart Stores, Inc.,* 235 Ill. 2d 351, 367 (2009).

The terms "value of" and "credit given" and their application must be read in conjunction with the rest of the regulatory language in 86 Ill. Adm. Code 130.455 to determine if the text is clear and unambiguous. "Regulatory provisions, like statutory provisions, must be read in concert and harmonized." *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 22 (2013).

The term "value of" a traded-in vehicle is specifically defined in subsection (b)(1) of 86 Ill. Adm. Code 130.455 to be "the amount of value assigned to a vehicle without regard to debt owed on the traded-in vehicle by any party." The regulation provides examples, set out above, to support that definition.

If a traded-in vehicle has a value of $10,000 without any lien on that car, the overall trade-in credit is $10,000. Similarly, if that same car has a lien of any amount ($3,000 is used in the regulation example), the lien amount is disregarded

and the trade-in credit is equal to the value of the traded-in vehicle, or the full $10,000.

Trade-in credits for trade-ins with cash back to the purchaser are calculated differently. "Credit given" is specifically defined in subsection (b)(2) of 86 Ill. Adm. Code 130.455 to be "the value assigned to the vehicle, reduced by any cash payments received by the purchaser or title holder of the traded-in vehicle. The reduction of the value by offsetting cash payments results in the actual *credit given* for the traded-in vehicle.[3] Where cash payment is made to the purchaser or the title holder of the traded-in vehicle, the trade-in credit is equal to the actual *credit given* for the vehicle."

Accordingly, cash back payments are explicitly excluded in the calculation of a trade-in credit. That type of transaction is illustrated in the last transaction example in the regulation. If the same traded-in vehicle having a trade-in value of $10,000 transaction provides that $2,000 is given to the purchaser, the trade-in credit must be the trade-in value reduced by the cash back, or in this example, $8,000.

Subsection (d)(2), which follows subsection (b) in 86 Ill. Adm. Code 130.455, provides that "[a]dvance trade-in credit given by the dealer to the purchaser in the amount of the *value of or credit given* for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash..." That subsection describes the nature of allowable payments to a purchaser to account for an advance trade-in credit, but not to the preliminary and overall calculation of trade-in credits as subsection (b) does.

The language of 86 Ill. Adm. Code 130.455 is unambiguous. Subsection (d)(2) does not provide an alternative definition to either the term "value of " or "credit given." Both subsections can be read in conjunction with each other. Pursuant to subsection (b), an overall trade-in credit must be the value of the trade-in minus any cash back to the purchaser. Once the overall trade-in credit is calculated, it may be given in the form of dealer credit or cash pursuant to subsection (d)(2). Motor Werks' argument to the contrary is rejected.

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[3] See *McCoy Ford, Inc. v. Dep't of Revenue,* 60 Ill. App. 3d 429 (4th Cir. 1978). In that case, the use of cash back when there was no obligation to use that cash toward a purchase of a car was not considered to be part of a trade-in. "The use of cash in these transactions suggests separate sales rather than a purchase-trade in relationship." *Id*. at 433. Under that rationale, cash back not a component of any trade-in credit.

II. Multiple Trade-in Credits

For certain vehicle transactions, Motor Werks claimed a trade-in credit along with an advance trade-in credit. In those circumstances where the trade-in was made by a third party, the Department did not accept Motor Werks combining of both types of credits and disallowed the smaller of the two trade-in credits.

Motor Werks argues that 86 Ill. Adm. Code 130.455 specifically allows for combining regular trade-in credits with advance trade-in credits. The Department agrees with Motor Werks that regular trade-in credits can be combined with advance trade-in credits under the regulation, but that the regulation prohibits the combination of credits when the regular trade-in credit belongs to a third party.

Pursuant to 86 Ill. Adm. Code 130.455(f)(3), "[a] multiple trade-in transaction or split trade-in transaction may only be used in conjunction with an advance trade-in transaction if the transfer of all vehicles involved in the trade are recorded as a single transaction and the purchaser is contractually obligated to purchase a vehicle from the dealer within the specified period of time."

Motor Werks argues that the plain language of subsection (f)(3) allows for multiple trade-ins to be combined with advance trade-ins and that it was only well after its initial audit cycle in this matter that the Department announced in a non-binding general information letter (GIL), ST 07-0007-GIL (March 28, 2007) that the Department would deny trade-in credits claimed that combined an advance trade-in credit and a third-party trade-in.

In its argument, Motor Werks failed to cite to and address subsection (c)(1)(c) of the trade-in regulation. That subsection reads, in part, "[]A prospective lessee or third party trade-in authorization may not be used in conjunction with an advance trade transaction; …" Moreover, Motor Werks provides no support as to why a completely unrelated third-party trade-in should be allowed to be combined with an advance trade-in.

The trade-in regulation, read as whole, specifically denies advance trade-in credits to be combined with third party trade-ins. That has been the announced position of the Department through its trade-in regulation, which has been in effect well before the position claimed by Motor Werks on its sales tax returns.[4]

[4] Motor Werks citation to two GILs issued by the Department prior to the conclusion of Motor Werks audit cycle to suggest the Department had previously approved such combinations is of no avail. Those GILs (ST 04-0145-GIL (August 23, 2004) and ST 01-126-GIL (July 23, 2001) do not state that third party trade-ins can be combined with advance trade-in credits.

Accordingly, Motor Werks' contention that it properly combined third party trade-in credits with advance trade-in credits is rejected.

B. The Trade-In Regulation Does Not Impermissibly Narrow the Scope of the Trade-In Statutes

Motor Werks contends that the trade-in regulation, 86 Ill. Adm. Code 130.455, impermissibly narrows the scope of the ROT and UT statutes which allow for the selling price of certain property, which includes vehicles, to be reduced by trade-in credits, 35 ILCS 120/1 and 35 ILCS 105/2. In making its argument, Motor Werks argues 1) the trade-in regulation creates a separate class of trade-in credits, advance trade-in credits, which are subject to "significant restrictions" not found in the underlying statutes; 2) those restrictions include the prohibition against combining third party trade-in credits with advance trade-in credits and the exclusion of cash back payments in calculating trade-in credits; 3) the trade-in regulation should be held invalid as applied to Motor Werks; and 4) the trade-in regulation should be held invalid on its face. Pet'r Mem. in Support of Mot. for Partial Summ. J. at pp. 9-12.

The Tax Tribunal is a court of limited jurisdiction, 35 ILCS 1010/1-45. "The Tax Tribunal shall decide questions regarding the constitutionality of statutes and rules as applied to the taxpayer, but shall not have the power to declare a statute or rule unconstitutional or otherwise invalid on its face." *Id*. at 1-45(f).

This court will not declare the trade-in credit regulation to be facially invalid.[5] Assuming, *arguendo*, that the Tax Tribunal were to have the authority to determine the constitutionality of the regulation, it would find the regulation to be constitutional.

"Administrative regulations have the force and effect of law and are interpreted with the same canons as statutes. Additionally, administrative agencies enjoy wide latitude in adopting regulations reasonably necessary to perform the agency's statutory duty. Such regulations carry a presumption of validity."" *Hartney*, supra, at ¶18 (citing cases). Nevertheless, "[a]dministrative regulations

[5] "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987).

can neither expand nor limit the statute they enforce." *Kean,* 235 Ill. 2d at 372 (citing *Outcom, Inc. v. Dep't of Transp.*, 233 Ill. 2d 234, 340 (2009)).

The trade-in regulation does not expand or limit the underlying statutes which allow for the selling price of certain property to be reduced by trade-in credits. The regulation does not exclude trade-in credits, nor does it impermissibly expand the underlying statutes by allowing the selling price of certain property to be further reduced by some other allowance other than trade-in credits. The trade-in regulation creates a chronological process for when trade-in credits can be recognized. Advance trade-ins, in addition to allowing for multiple trade-in transactions and split-trade transactions, simply acknowledges the recognition of certain trade-ins and allows for certain trade-ins credits to be recognized when the purchaser of the vehicle is contractually obligated to make a purchase within nine months after the advance trade and when the advance trade-in credit is properly documented. The Department was well within its rights to provide in its regulation for the orderly recognition of trade-in credits in a manner that could be applied with administrative oversight.

Motor Werks' two specific objections to the trade-in regulation which it claims reflect "significant restrictions" those being 1) the exclusion of cash back amounts in calculating trade-in credits and 2) the prohibition of combining third party trade-in credits with advance trade-in credits are rejected for the reason stated previously. Cash back amounts are simply not part of any trade-in and any resulting trade-in calculation and there is no basis for demanding that unrelated third party trade-in credits be grouped with advance trade-in credits.

In order to mount an as-applied challenge to a statute or regulation, a party must prove that a statute or regulation as it was applied to that party's particular situation was unconstitutional. "An 'as-applied' challenge represents a plaintiff's protest against how the statute was applied in the particular context in which the plaintiff acted or proposed to act, while a 'facial' challenge represents a plaintiff's contention that a statute is incapable of constitutional application in any context." *Byrd v. Hamer*, 408 Ill. App. 3d 467, 487 (2nd Dist. 2011) (citing *Lamar Whiteco Outdoor Corp. v. City of West Chicago,* 355 Ill. App. 3d 352, 365 (2005)).

Motor Werks' as-applied claim is that it is "challenging a regulation as being enforced by the Department in a way contrary to the plain language of the enabling statute." Petr's Reply Br. at p. 3. For the same reasons stated above finding the

trade-in regulation valid as a whole and as to the specific subsections that Motor Werks' raised as being "restrictive," Motor Werks' as-applied argument is rejected.

C. Enforcement of the Department's Administrative Ruling

MWH filed amended UT and ROT returns following the audits at issue for the tax period January, 2008 through December, 2009. On the amended ROT returns, MWH claimed certain credits relating to its Loaner Car Program. On November 14, 2014, the Department's Administrative Law Judge John White issued his decision on the merits of those claims in favor of MWH and recommended that the Department issue 39 credit memoranda to MWH in the amounts reported on the amended ROT returns.

To date, the Department has not given credit to MWH pursuant to Judge White's ruling. MWH now asks this court to enforce Judge White's ruling and order the Department to provide those credit amounts to MWH.

There is nothing before the Tax Tribunal involving the Loaner Car Program to resolve. The Tax Tribunal, a court of limited jurisdiction, *see* 35 ILCS 1010/1 *et seq*., is without authority to affirm a matter decided in another forum, provide relief ordered by another forum, or to order the Department to comply with Judge White's ruling. Presumably, the Department is waiting to confer the credits awarded to MWH when a final disposition is reached in this court as the matters overlap the same time period. Nevertheless, following oral argument on Motor Werks' Partial Summary Judgment Motion, this court requested that the Department advise MWH if it will 1) provide the relief requested and apply the credits as ordered by Judge White and 2) whether it will do so as soon as possible as opposed to waiting to the conclusion of the proceedings in these consolidated matters.

D. Abatement of Penalties

The Department proposes assessing Motor Werks late payment penalties on the initial round of Notices of Liabilities in this matter according to the Uniform Penalty and Interest Act, 35 ILCS 735-3-1, et *seq*. Solely for the reason that the Notices were issued during a time period when the Department had in effect an amnesty program pursuant to the Illinois Tax Delinquency Amnesty Act, 35 ILCS 745/1-1, *et seq*., the normal 20% rate for late penalties was doubled to 40% of the tax amounts the Department claims is due and owing. 35 ILCS 745/3-3(j).

Motor Werks claims that the late penalties should not apply as it can show its failure to pay the additional tax was due to "reasonable cause." 35 ILCS 735/3-8.

Motor Werks cites to the Department's regulation which contains examples of situations which constitute reasonable cause and allow for the abatement of penalties, 86 Ill. Adm. Code 700.400, and provides support for its contention by listing factors favorable to Motor Werks. Those include Motor Werks' history of tax compliance and filing history which include the timely filing of returns and the paying of the tax shown on its returns, the fact that it has been under continuous audit for ten years, its cooperation with the Department's auditors, its prompt payment of uncontested audit adjustments, and the complexity of the audits which involved thousands of transactions. Pet'r Mem. in Support of Mot. for Partial Summ. J. at pp. 20-21.

The factors recounted by Motor Werks are favorable to Motor Werks and support its argument that the penalties should be waived in this case. The Department, while not agreeing with Motor Werks, failed to counter with any factors as to why the penalties should not be waived other than to say in conclusory fashion that Motor Werks failed to show that the Department's decision to apply the late payment penalties was against the "manifest weight of the evidence." Dep't Mem. in Support of Mot. for Partial Summ. J. at p. 12.

Motor Werks points out that is the standard of review for appellate court review of administrative law decisions and it is correct that it is not how the Tax Tribunal should weigh evidence. Pet'r Reply Brief at p. 10. As noted above, the findings in a Notice of Liability as to taxes, interest, and penalties are deemed to be *prima facie* correct. But a *prima facie* presumption is rebuttable by a taxpayer through sufficient documentary support. *PPG Industries, Inc. v. Dep't of Revenue*, 328 Ill App. 3d 16, 33-34 (1st Dist. 2002).

While Motor Werks has made a strong showing of why it should not be assessed late payment penalties in this case, it is premature. At this juncture, Motor Werks has filed a partial summary judgment motion. Motor Werks estimates that 78% of the adjustments made by the Department to MWB's transaction returns relate to denial of trade-in credits and and 50% of the adjustments made by the Department to MWH's transaction returns relate to denial of trade-in credits. Pet'r Mem. in Support of Mot. for Partial Summ. J. at pp. 4-5. Accordingly, there must be unresolved issues remaining in the case that will have to be addressed.

Issues concerning the applicability of penalties are best left to be resolved at the conclusion of a case after all the facts and circumstances surrounding the proposed assessments are before the court. Motor Werks' request for a waiver of the late-payment penalties in this case will be denied for now, but Motor Werks will be

able to raise the same issue through the filing of its final summary judgment motion or during a final hearing in this matter.

3. Conclusion

Motor Werks' Motion for Partial Summary Judgment is DENIED. The Department's Motion for Partial Summary Judgment is GRANTED.

s/ *James Conway*
JAMES M.CONWAY
Chief Administrative
Law Judge

Date: March 27, 2017