ILLINOIS INDEPENDENT

TAX TRIBUNAL

PREMIER AUTO FINANCE, INC., Petitioner,	)	
v.	)	15 TT 175
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	

ORDER ON PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND DEPARTMENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Premier Auto Finance, Inc. is a wholly-owned subsidiary of Aon Corporation. Premier, in turn, is the parent company of several corporations, including Cananwill, Inc. (PA), Cananwill (CA), and Cananwill Corporation (DE) (collectively the Cananwill entities). For tax periods 2006 through 2008, Aon and its subsidiaries filed three separate Illinois combined unitary business group returns. One return reported the unitary business group income for general corporations, one return reported the unitary business group income for insurance companies, and one return reported the unitary business group income for financial organizations. Premier and the Cananwill entities were included on the returns filed for financial organizations.

In 2012, Premier filed amended returns for the financial organizations for tax periods 2006 through 2008 requesting a refund of approximately $1,681,019 from the Department. The adjustment made on the amended returns, which creates the sole issue in this case, was Premier removing the Cananwill entities from the returns for the financial organizations based on its view that the Cananwill entities

were not financial organizations. The Cananwill entities were then included on the returns for Aon's general corporations.[1]

The Department denied the claims contained on Premier's amended returns to disallow the re-characterization of the Cananwill entities from being financial organizations to being general corporate organizations.

In its Petition and Summary Judgment Motion, Premier argues that the Cananwill entities do not qualify as financial organizations under 35 ILCS 5/304(c) (the Illinois Income Tax Act (IITA)). Premier claims that each of the Cananwill entities does not fall under the definition of a financial organization found at 35 ILCS 5/1501(a)(8)(A) and, more particularly, does not fall under the definition of a sales finance company, a type of financial organization, found at 35 ILCS 5/1501(a)(8)(C). Its contention is premised on its position that the purchase of insurance is neither the purchase of tangible personal property or the purchase of a service, but is the purchase of an "intangible," and, thus, each Cananwill entity cannot be a sales finance company.

In its Cross-Motion for Summary Judgment, the Department argues that each of the Cananwill entities is an insurance premium financing company, as defined in the Premium Finance Regulation Act, 215 ILCS 5/513a 2 (d), and that each qualifies as a financial organization for purposes of the IITA. It claims each entity is a financial organization because each entity meets the definition of a sales finance company whose business income should be reported on tax returns for financial organizations. The Department's contention is premised on its position that the purchase of insurance is the purchase of a service. That conclusion results in each of the Cananwill entities being treated as a sales finance company and as financial organization for purposes of its filing status with Aon's Illinois combined unitary groups' returns.

As explained below, Premier's summary judgment motion is denied and the Department's cross-summary judgment motion is granted.

[1] Premier continued to consider itself a financial organization.

1. Background

A. Financial Organizations

For purposes of the Illinois Income Tax Act, financial organizations are defined at 35 ILCS 5/1501(a)(8)(A), as follows:

> (A) The term "financial organization" means any bank, bank holding company, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, building and loan association, credit union, currency exchange, cooperative bank, small loan company, **sales finance company,** investment company, or any person who is owned by a bank or bank holding company. (emphasis added.)

A sales finance company is defined in the same statute, in part, as:

> (C) For purposes of subparagraph (A) of this paragraph, the term "sales finance company" has the meaning provided in the following item (i) or (ii):
>
> (i) A person primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business of making loans upon the security of customer receivables**, the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower**, or the business of finance leasing. (emphasis added.)

The Department's regulation on sales finance companies, 86 Ill Adm. Code 100.9710(d)(10)(A) reiterates the same definition by stating, in part:

> Under IITA Section 1501(a)(8)(C)(i), the term "sales finance company" means an entity *primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business of making loans upon the security of customer receivables, the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower, or the business of finance leasing.* For purposes of this subsection (d)(10)(A), a "customer receivable" means: …

> iv) A loan, or balance under a loan, made by a lender for the express purpose of funding purchases of tangible personal property or services by the borrower. …

The Premium Finance Regulation Act, 215 ILCS 5/513a2(d), defines a premium finance company as "[a]ny person engaged in the business of financing insurance premiums, of entering into premium finance agreements with insureds, or of acquiring premium finance agreements."

B. Cananwill

The Cananwill entities provide short term loans to businesses which use those loan proceeds to finance their commercial property and casualty insurance premium obligations. The use of such a credit facility allows a business to effectively pay an insurance premium over a period of time as opposed to paying an entire insurance premium up front. The Cananwill entities makes its money by charging financing fees on the loans. In Illinois, premium finance companies, like the Cananwill entities, are regulated pursuant to the Premium Financing Regulation Act.

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, Premier filed a Motion for Summary Judgment, the Department filed a Cross-Motion for Summary Judgment, and Premier filed a Response to Respondent's Cross-Motion for Summary Judgment. 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 tentative denial of claims issued by the Department are considered to *prima facie* correct and are *prima facie* evidence that the denial of claims are correct. 35 ILCS 505/21; 35 ILCS 120/6b. *See Copilevitz v. Dep't of Revenue*, 41 Ill. 2d. 154, 156-157 (1968).

A. Insurance

The parties agree that this case turns on the issue of whether the purchase of insurance can be categorized for purposes of the IITA's financial organizations statute, 35 ILCS 5/1501(a)(8)(A), as the purchase of tangible personal property or the purchase of a service, otherwise the Cananwill entities should not be considered as sales finance companies.

Insurance, itself, is not defined in Illinois statutes, including the Illinois Insurance Code. The Illinois Appellate Court has recognized the common law definition of insurance to be "(1) a contract or agreement between an insurer and an insured which exists for a specific period of time; (2) an insurable interest * * * possessed by the insured; (3) consideration in the form of a premium paid by the insured to the insurer; and (4) the assumption of risk by the insurer whereby the insurer agrees to indemnify the insured for potential pecuniary loss to the insured's property resulting from certain specified perils." *Homeward Bound Services, Inc. v. Illinois Dep't of Insurance*, 365 Ill. App. 3d 267, 293-294 (3d Dist. 2006) (citing *Griffin Systems Inc. v. Washburn*, 153 Ill. App. 3d 113, 116 (1st Dist. 1987)).

35 ILCS 5/1501(a)(8)(C)(i) expressly provides, in part, that "[t]he business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower…," qualifies that business to be a sales finance company. Premier argues that its business of providing insurance premium financing is not covered by 35 ILCS 5/1501(a)(8)(C)(i) because insurance contracts are intangible in nature and financing a purchase of an intangible is not included in the definition of covered business activities necessary for a business to be considered a sales finance company. Pet'r Mem. in Support of Mot. for Summ. J. at 4; 6-9.

35 ILCS 5/1501(a)(8)(C)(i) focuses on what is being purchased by an ultimate borrower, and if that purchase is for tangible personal property or for a service, the lender can be a sales finance company.[2] It does not focus on a contract or written agreement that spells out the specific terms of a transaction. Instead, that statute looks to the item being purchased in the underlying sales transaction which is being

[2] Under 35 ILCS 5/1501(a)(8) and the related Department's regulation found at 86 Ill. Adm. Code 100.9710(d)(10), qualified sales financing companies are defined with further restrictions and limitations, none of which are relevant to the analysis in this case.

financed. Accordingly, whether the purchase of insurance is the purchase of intangible property, tangible personal property[3] or a service controls the applicability of 35 ILCS 5/1501(a)(8)(C)(i) in this case, not the categorization of a contract that evidences the underlying purchase of insurance.

The fallacy in Premier's argument which is premised on highlighting the nature of a general contract is twofold.

First, it directs one's attention to, and the categorization of, a contract for the purchase of property or a service as opposed to the categorization of the underlying item being purchased. If one concludes that it is the contract for the purchase of tangible property, intangible property, or a service transaction that controls the application of ILCS 5/1501(a)(8)(C)(i), then any purchase of tangible personal property or a service evidence by an intangible contract would be excluded from 35 ILCS 5/1501(a)(8)(C)(i). That would render 35 ILCS 5/1501(a)(8)(C) void. "In giving meaning to the words and clauses of a statute, no part should be rendered superfluous" and "[s]tatutory provisions should be read in concert and harmonized." *Hartney Fuel Oil Co. v Hamer*, 2013 IL 115130, ¶ 25 (citing *Standard Mutual Insurance Co. v. Lay*, 2013 IL 114617, ¶ 26 and *People v. Rinehart*, 2012 IL 111719, ¶ 26).

Secondly, the purchase of a service can be considered a purchase of intangible. The terms "intangibles" and "services" are not mutually exclusive. Intangible services are a subset of "intangibles." For example, a transaction which requires the performance of some task such as the performance of a concert by a musician, is the purchase of an intangible service. While 35 ILCS 5/1501(a)(8)(C)(i) excludes companies which finance the purchase of intangible personal property, it expressly includes companies which finance the purchases of services, which by definition, includes the purchase of services that can be categorized as being intangible.

Illinois Courts have recognized the Sale of Insurance to be a Sale of a Service

Under the common-law definition of insurance cited above, an insurer promises to assume certain risks and to indemnify, or compensate, the insured in the event of a loss. The service an insurer provides is to make an insured whole, subject to the terms and limits of an insurance agreement, by performing its obligations under that agreement to take an insurable loss upon itself. In the

[3] Neither party argues that insurance is tangible personal property.

present case, clients of the Cananwill entities entered agreements with underlying insurance companies who agreed to assume risk and perform in case of insurable loss covered under commercial property and casualty insurance policies. By providing insurance, those insurers provided a service to their clients of assuming risk and, upon loss, indemnifying those clients. It is that service for which the Cananwill entities provided financing to the insured clients so that they could purchase that service from insurance companies.

Premier is correct when it states that insurance is not defined, or categorized as a service, under the Illinois Income Tax Act, 35 ILCS 5/101, *et seq*. However, as the Department points out, the Illinois Appellate Court has held that the sale of insurance is the sale of a service in deciding cases four decades ago and brought under the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1, *et seq*. Dep't Cross Mot. for Summ. J. at 9-11.[45]

In *Fox v. Industrial Casualty Insurance*, 98 Ill. App. 3d 543 (1st Dist. 1981), the Illinois Appellate Court stated:

> On the other hand, the Consumer Fraud Act is designed to protect consumers from unfair or deceptive acts and practices. (Ill.Rev.Stat.1979, ch. 1211/2, par. 262.) The Act itself defines a consumer as "any person who purchases or contracts for the purchase of merchandise * * *." (Ill.Rev.Stat.1979, ch. 1211/2, par. 261(e).) The Act defines merchandise as including "any objects, wares, goods, commodities, intangibles, real estate situated outside the state of Illinois, or services." (Emphasis added.) (Ill.Rev.Stat.1979, ch. 1211/2, par. 261(b).) The sale of insurance is clearly a service and insureds are thus consumers and within the protection of the Consumer Fraud Act.

Id. at 546.

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[4] Granted, the Illinois Consumer Fraud Act is not in *pari materia* with the Illinois Income Tax Act, but the Illinois Appellate Court ruled that insurance was a service for purposes of the CFA without any reservation. If the legislature felt a need to categorize insurance differently for the IITA, it could have done at any time since the court decisions were handed down in the CFA cases forty years ago.
[5] The Department also refers to a non-precedential Seventh Circuit district court case, *P.I.A Michigan City, Inc. v. National Porges Radiator Corp*., 789 F. Supp. 1421,1426 (7th Cir. 1992), in which District Court Judge Hart wrote: "It is well-settled that the sale of insurance is a service to which the protections of the Consumer Fraud Act applies." (citing cases, including *Fox* and *McCarter*). Additionally, the Department cites to a federal Fair Housing Act case for the same proposition: "Plaintiffs also submit that property insurance is a 'service' rendered 'in connection' with the sale of the dwelling. If the world of commerce is divided between 'goods' and 'services,' then insurers supply a 'service.' *N.A.A.C.P. v. American Family Mut. Ins. Co*., 978 F. 2d 287, 298 (7th Cir. 1992). Dep't Cross Mot. for Summ. J. at 13-14.

In *McCarter v. State Farm Mutual Auto Insurance Co.*, 130 Ill. App. 3d 97 (3rd Dis. 1981), the Illinois Appellate Court again held that the sale of insurance is a sale of a service:

> The defendant argues that the plaintiff has no standing to sue under the Consumer Fraud and Deceptive Business Practices Act. (Ill.Rev.Stat.1981, ch. 121 1/2, par. 261 et seq.) The sale of insurance is a service for purposes of the Consumer Fraud Act (citing *Fox*, supra).

Id. at 101.

Premier attempts to counter the holdings of *Fox* and *McCarter* with arguing that insurance can be intangible without being a considered a service by referring to a non-precedential federal district court case, *Labella Winnetka, Inc. v General Casualty Insurance Co.*, 259 F.R.D. 143 (N.D. Ill. 2009). [6] In that case, the district court simply stated that, under the Illinois Consumer Fraud Act, "[i]nsurance qualifies as merchandise…" *Id.* at 150. Premier uses that bare statement to argue that insurance does not need to be considered a service to be covered under the CFA. However, that argument completely ignores the definition of "merchandise" under the Act, cited above, which includes services. 815 ILCS 505/1(b). Premier's argument is rejected.

To further support its contention that insurance should be categorized as intangible property as opposes to an intangible service, Premier cites to *Wendy's International Inc. v. Hamer*, 2013 IL App (4th Dist.) 110678, for the proposition that the purchase of insurance should be viewed simply as the purchase of a contract. Pet'r Mem. in Support of Mot. for Summ. J. at 7-8.

Wendy's created a wholly-owned insurance company, Scioto, to self-insure its business risks. Scioto was recognized as an insurance company under federal law by the Internal Revenue Service and was organized as an insurance company under the laws of Vermont. When it came time to file its Illinois unitary income tax returns, Wendy's treated Scioto as an insurance company and did not include its income on its unitary business group's combined income tax returns. Following an audit, the Department concluded that Scioto should not be treated as an insurance company as, *inter alia*, there was no actual risk shifting between Scioto and Wendy's.

[6] Pet'r Response at 5.

The Illinois Appellate Court rejected the Department's arguments and held that Scioto met the definition of an insurance company for purposes of the Illinois Income Tax Act apportionment statute, 35 ILCS 5/1501, *et seq*.. *See Wendy's*, 2013 IL App (4th Dist.) 110678 at ¶ 41. The Court did not hold that the purchase of insurance is simply the purchase of a contract in its opinion as Premier suggests in its memorandum. Rather, the Court looked to the underlying obligations and performance of an insurance company as defined under federal law to determine the activity of a bona-fide insurance company, which buttresses the contention that insurance is a service as it defined the performance of an insurer under an insurance contract:

> Wendy's also argues Scioto is engaged in the insurance business because it effectuates risk shifting and risk distribution. Under federal tax law, insurance involves both risk shifting and risk distribution. *Helvering v. Le Gierse,* 312 U.S. 531, 539, 61 S.Ct. 646, 85 L.Ed. 996 (1941). It is "an agreement to protect the insured against a direct or indirect economic loss arising from a defined contingency whereby the insurer undertakes no present duty of performance but stands ready to assume the financial burden of any covered loss." *Allied Fidelity Corp. v. Commissioner,* 572 F.2d 1190, 1193 (7th Cir.1978). Risk shifting "entails the transfer of the impact of a potential loss from the insured to the insurer." *Clougherty Packing Co. v. Commissioner,* 811 F.2d 1297, 1300 (9th Cir.1987).

Id. at 32.

The Appellate Court in *Wendy's* did not categorize insurance strictly as the purchase of a contract, nor was the issue of categorizing "insurance" before the Court. *Wendy's* is simply inapplicable to this case, and Premier's argument to the contrary is rejected.

Federal Law Does Not Define the Character of Insurance to be the Purchase of a Contract

In its efforts to suggest that an insurer simply provides a contract when it agrees to perform under the terms of an insurance policy and that the terms of such an agreement, including terms of performance, should not be reviewed to determine the characteristics of insurance, Premier claims that contracts are considered intangible property under the Internal Revenue Code. Pet'r Mem. in Support of Mot. for Summ. J. at 7-8; Pet'r Response at 2-6. Pursuant to Section 102 of the Illinois Income Tax Act:

> Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

35 ILCS 5/102.

Premier claims two statutory sections of the Internal Revenue Code, 26 U.S.C. §§ 936 and 197, support its position that the purchase of insurance is a purchase of an insurance contract which is intangible property. While a contract, in and of itself, is intangible, neither section stands for the proposition that the purchase of insurance should be considered simply the purchase of a contract as opposed to a purchase of a service.

26 U.S.C. § 936 provided certain tax credits for businesses which operated in Puerto Rico. Although Premier failed to mention it in either of its summary judgment filings, that Internal Revenue Code section was phased out beginning in 1996.[7] Nevertheless, even if still operable, that section does not support Premier's argument.

Section 936 defined intangible property income of a corporation for purposes of inclusion, and exclusion, as gross income on corporate and shareholders' returns in calculating credits under that section as:

> (3) **INTANGIBLE PROPERTY INCOME** For purposes of this subsection—
>
> (A) **In general**
> The term "intangible property income" means the gross income of a corporation attributable to any intangible property other than intangible property which has been licensed to such corporation since prior to 1948 and is in use by such corporation on the date of the enactment of this subparagraph.
>
> (B)**Intangible property** The term "intangible property" means any—

[7] "The sec. 936 credit was terminated, effective for all tax years after Dec. 31, 1995, with a limited phaseout until Dec. 31, 2005. Small Business Job Protection Act of 1996, Pub.L. 104–188, sec. 1601(a), 110 Stat. 1827." *Microsoft Corp. v. C.I.R.*, 75 T.C.M. (CCH)1747, 1998 WL 51853, fn. 3 (T.C. 1998).

> (i) patent, invention, formula, process, design, pattern, or know-how;
> (ii) copyright, literary, musical, or artistic composition;
> (iii) trademark, trade name, or brand name;
> (iv) franchise, license, or contract;
> (v) method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or
> (vi) any similar item,
> which has substantial value independent of the services of any individual.

26 US.C. § 936(h)(3).

Section 936 merely states that a contract, in and of itself, is intangible. It does not reference any underlying service or product transaction that can be evidenced by a contract and it contains no reference to insurance whatsoever.

Premier's second statutory reference to the Internal Revenue Code, 26 U.S.C. § 197 and its related Treasury regulation, is of no avail to Premier, as well. Section 197 relates to amortization deductibles for certain defined intangible property acquired by a taxpayer such as patents, copyrights, licenses, covenants not to compete, and other intangible items. That statute states, in part:

> (5) **Treatment of certain reinsurance transactions**.--In the case of any amortizable section 197 intangible resulting from an assumption reinsurance transaction, the amount taken into account as the adjusted basis of such intangible under this section shall be the excess of--
>
> (A) the amount paid or incurred by the acquirer under the assumption reinsurance transaction, over
>
> (B) the amount required to be capitalized under section 848 in connection with such transaction.

26 U.S.C. § 197(f)(5)

Reinsurance is an agreement by insurance companies where one insurance company agrees to reimburse the original insurer if it is obligated to pay under the original policy of direct insurance. It is not an agreement between the original insurer and original insured, but an agreement between two insurance companies.

The Illinois Supreme Court has held that reinsurance is not insurance. In deciding *In Re Liquidations of Reserve Insurance Co.*, 122 Ill. 2d 555 (1988), the

Illinois Supreme Court had to decide whether reinsurance agreements were direct insurance agreements under the Illinois Insurance Code for purposes of determining the priority of certain claims in a liquidation proceeding. After setting out and analyzing certain sections of the Illinois Insurance Code, the Illinois Supreme Court held that reinsurance was not insurance: "Accordingly, based upon a reading of the Code as a whole, the terms 'insurance' and 'reinsurance' have distinct and separate meanings." *Id*. at 563.

Premier's argument that equates reinsurance with insurance is rejected.

Illinois Warranty Contract Cases Do Not Hold that Insurance is Not a Service

Premier argues that the *Griffin Systems* and *Homeward Bound* cases, cited above, stand for the proposition that insurance is a contract, insurance contracts are distinguishable from service or warranty contracts, and, therefore, insurance cannot be considered as a service. Pet'r Mem. in Support of Mot. for Summ. J. at 10-12. Neither case stands for that proposition.

In *Griffin Systems*, the Illinois Appellate Court had to determine whether Griffin was selling insurance when it offered a Vehicle Protection Plan, described as a mechanical services contract, to Illinois residents who purchased new automobiles. Under that contract, Griffin agreed to repair/replace certain broken auto parts covered under the terms and time limits of the contract. The Illinois Department of Insurance claimed Griffin was selling insurance and issued a cease and desist order against Griffin. The Appellate Court found that Griffin was offering insurance as opposed to a warranty or service contract:

> Hence, we agree with the Department and the trial court that Griffin's Plan contains all of the elements contained within the common law definition of insurance. The essence of the Plan is to indemnify the customer; to reimburse the customer for a possible future loss to a specified piece of property caused by a specified peril, namely, mechanical failure. Consequently, the Plan constitutes insurance and properly falls within the authority of the Department.

Id. at 117.

The Appellate Court did not hold that insurance was just a purchase of a contract and not a purchase of a service. It simply distinguished insurance

contracts from warranty and service contracts as the former are contracts between third parties and insureds and the latter are between direct contracting parties:

> An analysis of the cases set forth above reveals that a warranty and a service contract have many of the same features. Nonetheless, the distinguishing feature which sets them apart from an insurance policy is the fact that the respective companys *manufacture or sell the products which they agreed to repair or replace*. No third parties are involved nor is there a risk accepted which the company, because of its expertise, is unaware of. Through a warranty or service contract, a company simply guarantees that its own product will perform adequately for a period of time.
>
> Insurance policies, on the other hand, are generally issued by third parties and are based on a theory of distributing a particular risk among many customers.

Id. at 17-18.

In *Homeward Bound*, the Appellate Court had to determine whether the Homeward Bound company was offering insurance when it entered into agreements, titled "Assisted Living Service Agreement," to provide home health care services to elderly people. The gist of those agreements was for the company to provide certain types of assistance after a waiting period for certain future care needs. The company claimed it was offering a pre-need program and not insurance, but the Illinois Department of Insurance thought otherwise and issued a cease and desist order to the company.

The Appellate Court found that the company was offering insurance. The Court quoted the common-law definition of insurance cited above. It also rejected the company's argument that a lack of a statutory definition of insurance in the Illinois Insurance Act made that statute void for vagueness:

> The word "insurance" is common in itself, and the *Griffin Systems* decision served to clarify the common understanding of what constitutes insurance business. In light of its need for flexibility in regulating these matters, the legislature was not required to go farther and pin down additional particulars.

Id. at 294.

Neither *Griffin Systems* or *Homeward Bound* hold that insurance must be construed simply as a contract and that insurers do not provide a service to its insureds. Premier's arguments to the contrary are rejected.

Department of Revenue General Information Letters and Private Letter Rulings

To bolster its theory that insurance constitutes an intangible contract and nothing more, Premier cites to two Department General Information Letters, IT 01-0070-GIL (August 30, 2001) and IT 12-0029-GIL (Oct. 5, 2012), and to a Department Private Letter Ruling, ST 91-0431-PLR (May 31, 1991). Pet'r Mem. in Support of Mot. for Summ. J. at 7; Pet'r Response at 11-12. The Department countered that the GILs and the PLR are irrelevant and that they do not present an analysis of whether insurance can be considered to be a service. Dep't Cross Mot. for Summ. J. at 21-23.

General Information Letters (GIL) and Private Letter Letter Rulings (PLR) are generally excluded from the body of law that a court should review in determining whether there is any precedent for an issue to be decided one way or the other. "Private letter rulings are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. Private letter rulings are binding on the Department only as to the taxpayer who is the subject of the request for ruling." 2 Ill. Adm. Code 1200.110(a). The same holds true for General Information Letters. "General Information letters do not constitute statements of agency policy that apply, interpret or prescribe the tax laws administered by the Department. Information letters are not binding on the Department, may not be relied upon by taxpayers in taking positions with reference to tax issues…" 2 Ill. Adm. Code 1200.120(c).

Generally, "private letter rulings have no precedential effect." *Subway Restaurants of Bloomington-Normal, Inc. v. Topinka*, 322 Ill. App. 3d 376, 385 (4th Dist. 2001) (*quoting UnionElectric Co., Inc.*, 136 Ill. 2d 385, 400). But, where a private letter ruling "clearly contains a policy of general applicability" that "reflects the policy which was in effect during the time period at issue," it may be considered "instructive" as to the Department's construction of its regulations. *Id.*

Premier acknowledges that the GILS and the PLR have no binding or dispositive effect on this case, but attempts to get them in the back door by claiming they "[s]uggest the Department's historical perspective on the matter and the proper interpretation of this case." Pet'r Response at 11. They do not. The two GILS and the PLR cited by the Petitioner are irrelevant and do not contain any

policy of general applicability relating to categorization of insurance for purposes of the financial organizations statute. Premier's argument is rejected.

Statutory Interpretation of 35 ILCS 5/1501(a)(8)(C)

During oral argument on the pending summary judgment motions, Premier made, for the first time, a belated argument that the Illinois legislature intended for the definition of "services" in 35 ILCS 5/1501(a)(8)(C) to be restrictive based on the legislative history of Public Act 91-0535 which changed the definition of "sales finance company" in the Illinois Income Tax Act. That argument is rejected as there is no need to resort to a review of the legislative history as the term "service" is not ambiguous.

"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. Ill. Commerce Comm'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.*

35 ILCS 5/1501(a)(8)(C) sets out the businesses that are defined as sales finance companies including "[t]he business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower, …" There is nothing ambiguous about the term "services." The issue presented in this case is solely whether an insurer agrees to provides a service to an insured when they enter into an insurance contract. Because the term "service" is not ambiguous, there is no reason to refer to legislative history or the intent of legislators when they passed the current version of the statute.

3. Conclusion

Insurers provide a service to insureds when they agree to provide insurance for purposes of 35 ILCS 5/1501(a)(8)(C)(i). That means, subject to other requirements/limitations found in the financial organization's definitional statute, that a company which is in the business of making loans for the express purpose of funding purchases of insurance can be considered a "sales finance company" and, therefore, a "financial organization" for purposes of 35 ILCS 5/1501(a)(8)(A). The

Cananwill entities are sales finance companies and financial organizations pursuant to those statutory sections.

The Cananwill entities' operational income was properly reported initially on the unitary business group income tax returns for financial organizations for tax periods 2006 through 2008. It was appropriate for the Department to reject the amended returns at issue that re-characterized the Cananwill entities from being financial organizations to being general corporate organizations.

Premier's Motion for Summary Judgment is Denied and the Department's Cross-Motion for Summary Judgment is Granted.

This is a final order subject to appeal under section 3-113 of the Administrative Review Law, and service by email is service under section 3-113(a). See 35 ILCS 1010/1-90; 86 Ill. Adm. Code 5000.330. The Tribunal is a necessary party to any appeal.

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

Date: September 7, 2017