

A core doctrine of administrative law states that courts should defer to agencies' interpretations of ambiguous statutes so long as these interpretations are "reasonable." The Illinois Supreme Court has sanctioned the applicability of this legal doctrine in Illinois. Citibank, N.A. v. Illinois Department of Revenue, 2017 IL 121634 ¶ 39. However, Kishwaukee Auto Corral, Inc. v. Illinois Department of Revenue, 2021 IL App. (1st) 200236 (November 8, 2021) demonstrates the scope and limitations of such deference. This case involves 35 ILCS 120/6d. Under this statute, where a car dealer is both the vendor and the lender and prepays sales tax as part of the loan, the dealer may deduct the sales tax portion of the debt on its sales tax returns if the purchaser defaults on the loan.

35 ILCS 120/6d provides as follows:

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

Based upon this statute, the Department promulgated a regulation which provides that the bad debt deduction is not available to a dealer that is a "cash basis taxpayer" because these taxpayers cannot claim such bad debts as deductions on their Federal income tax returns. An Independent Tax Tribunal administrative law judge disallowed Kishwaukee Auto Corral's attempt to take a sales tax deduction for a bad debt arising from an automobile loan default based upon this regulation.

Decisions of the Independent Tax Tribunal are appealable directly to the Appellate Court. On appeal, the Appellate Court found no basis for denying the bad debt deduction solely because the dealer was a cash basis taxpayer.

Significantly, the Appellate Court applied the doctrine of deference to administrative interpretations of ambiguous statutes in this case, thus reaffirming the applicability of this doctrine under Illinois law. However, in applying this doctrine, the Appellate Court cautioned that only reasonable interpretations of statutes by the agency would be accorded deference. In reaching its decision in this case, the court stated as follows:

A *reasonable* construction of an ambiguous statute by the agency charged with its administration and enforcement can create a presumption of correctness, if contemporaneous, consistent, long continued, and accompanied by legislative acquiescence. (*Citibank, supra*). However, the Department's regulation in this case is not reasonable. When Kishwaukee sells a car, it is required to pay ROT (sales tax) on the car's entire value up front. If the buyer defaults and Kishwaukee repossesses the car, it resells the car and *again* pays the full ROT (sales tax) up front. To deny Kishwaukee a refund under these circumstances would be to allow the State double recovery, which is both unreasonable and contrary to the express intent of the legislature in enacting section 6d.

Even though the agency's interpretation of the statute in its regulation, and the administrative law judge's decision upholding it, was reversed by the Appellate Court, this case nevertheless reaffirms the applicability of the core doctrine of deference to administrative interpretations of ambiguous statutes in Illinois administrative law and other cases.