No. 19-CV-06427

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

ILLINOIS DEPARTMENT OF REVENUE,

Appellant,

v.

TOTAL FINANCE INVESTMENT INC., CAR OUTLET HOLDING INC., CAR OUTLET AC LLC, FULL SERVICE AUTO REPAIR AC LLC, TODO SEGURO AC LLC, TODO SEGURO PREMIUM FINANCE AC LLC, and TOTAL FINANCE AC LLC,

Reorganized Debtors-Appellees.

Appeal from the United States Bankruptcy Court
for the Northern District of Illinois, Eastern Division,
No. 19-bk-03734
The Honorable Carol A. Doyle

BRIEF OF REORGANIZED DEBTORS-APPELLEES

Bojan Guzina
Jackson T. Garvey
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000
bguzina@sidley.com
jgarvey@sidley.com

Joshua D. Yount
Craig E. Reimer
Samantha C. Booth
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600
jdyount@mayerbrown.com
creimer@mayerbrown.com
sbooth@mayerbrown.com

Amy F. Nogid
(*pro hac vice* pending)
MAYER BROWN LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 506-2500
anogid@mayerbrown.com

Counsel for Reorganized Debtors-Appellees

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Federal Rule of Bankruptcy Procedure 8012, the Appellees make the following disclosures:

1. Appellees Total Finance Investment Inc. and Car Outlet Holding Inc. each state that its direct parent corporation is TF-CO Asset Management LLC and that Marubeni Corporation, a publicly traded company, indirectly owns greater than 10% of its outstanding equity.

2. Appellee Total Finance AC LLC states that its direct corporate parent is Total Finance Investment Inc. and that Marubeni Corporation, a publicly traded company, indirectly owns greater than 10% of its outstanding equity.

3. Appellees Car Outlet AC LLC, Full Service Auto Repair AC LLC, Todo Seguro AC LLC, and Todo Seguro Premium Finance AC LLC each state that its direct corporate parent is Car Outlet Holding Inc. and that Marubeni Corporation, a publicly traded company, indirectly owns greater than 10% of its outstanding equity.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes and Rules

TABLE OF AUTHORITIES
(continued)

Page(s)

Other Authorities

JURISDICTIONAL STATEMENT

The bankruptcy court had subject-matter jurisdiction over all issues presented in this appeal pursuant to 28 U.S.C. § 1334 because those issues relate to an entitlement to tax credits that could have had a material effect on the estates being administered in the bankruptcy by making more funds available to creditors. ROA[1] 11-5, at 221–45 (Order, at 7–31); *see infra* pp. 16, 19–23. The district court has jurisdiction over this appeal—taken from the bankruptcy court's June 11, 2019 final order and judgment and its September 12, 2019 order denying a timely reconsideration motion—pursuant to 28 U.S.C. § 158(a)(1). Appellant timely appealed the final order and judgment and the denial of reconsideration on September 26, 2019. ROA 11-7, at 18; Fed. R. Bankr. P. 8002(b)(1)(C).

STATEMENT REGARDING ORAL ARGUMENT

Appellees respectfully request oral argument to address any questions the Court may have following the conclusion of briefing. *See* Fed. R. Bankr. P. 8019.

STATEMENT OF ISSUES PRESENTED

1. Did the bankruptcy court properly conclude that it had jurisdiction under 28 U.S.C. § 1334(b) to decide whether a non-debtor is entitled to tax credit memoranda where recovery of those memoranda would increase the value of, and therefore directly affect, a debtor's bankruptcy estate?

---

[1] References to the "ROA" refer to the Record on Appeal, as transmitted by the bankruptcy court and filed in this appeal as Dkt. No. 11.

- This legal question is subject to *de novo* review. *In re Miss. Valley Livestock, Inc.*, 745 F.3d 299, 302 (7th Cir. 2014).

2. Did the bankruptcy court properly rule that it had statutory authority under 11 U.S.C. § 505(a)(1) to decide whether a non-debtor is entitled to tax credit memoranda where the non-debtor has agreed to transfer any recovered memoranda to a debtor?

- This legal question is subject to *de novo* review. *See In re FedPak Sys., Inc.*, 80 F.3d 207, 211 (7th Cir. 1996) (questions "of federal statutory and constitutional law" are reviewed "de novo").

3. Did the bankruptcy court properly hold that the Tax Injunction Act does not apply to a tax dispute over which the bankruptcy court had authority under 11 U.S.C. § 505(a)(1)?

- This legal question is subject to *de novo* review. *See FedPak*, 80 F.3d at 211.

4. Did the bankruptcy court commit clear error when it found—based on the totality of the evidence—that certain car dealers retained the burden of the sales tax related to auto loans sold to certain financing companies?

- This factual question is reviewed for clear error. *See In re marchFIRST, Inc.*, 573 F.3d 414, 416 (7th Cir. 2009).

5. Did the bankruptcy court abuse its discretion in denying Appellant's request for reconsideration, based on a brand new argument related to how the price of loans sold to the financing companies was calculated, when abundant evidence confirmed that the car dealers retained the sales tax burden?

- This question of bankruptcy court discretion is subject to abuse-of-discretion review. *See NewSpin Sports, LLC v. Arrow Elecs., Inc.*, 910 F.3d 293, 300 (7th Cir. 2018) (reviewing "court's denial of a Rule 59(e) motion for reconsideration … for abuse of discretion"); *Hoffman v. UAL Corp.*, 2008 WL 4297053, at *2 (N.D. Ill. Sept. 11, 2008) (abuse of discretion standard applies to bankruptcy court's denial of Rule 59 motion).

6. Did the bankruptcy court abuse its discretion in denying Appellant's post-judgment request to reopen discovery to permit Appellant to explore the *possibility* of a factual dispute over the value of the loans that the car dealers did not sell to the financing companies, where Appellant did not previously seek discovery?

- This question of bankruptcy court discretion is subject to abuse-of-discretion review. *Winters v. Fru-Con Inc.*, 498 F.3d 734, 743 (7th Cir. 2007) ("We review the district court's decision not to reopen discovery for abuse of discretion.").

STATEMENT OF THE CASE

Appellees are a group of affiliated vehicle retailer, financing, and holding companies that filed for Chapter 11 bankruptcy protection in early 2019. Prior to the initiation of those bankruptcy cases, debtor Car Outlet AC ("COAC") and a non-debtor affiliate, Car Outlet, Inc. ("Car Outlet") (collectively, the "Dealers") were in the business of selling used automobiles in the Chicago area.

A. COAC and Car Outlet Paid Sales Tax to IDOR and Sought Credits for Amounts Not Recouped From Customers.

When a vehicle is purchased on credit in Illinois, the dealer must pay a Retailers' Occupation Tax ("ROT") to the Illinois Department of Revenue ("IDOR") within 20 days. 35 ILCS 120/2. It may recoup that payment from the customer via a

"Use Tax" (35 ILCS 105/3), which the customer may finance as part of the vehicle loan principal. Collectively, the ROT and Use Tax are often referred to as "Sales Tax." If the customer defaults on the vehicle loan before the Use Tax is fully repaid, the dealer may apply to IDOR for either a cash refund or a tax credit memorandum for the amount of ROT paid to IDOR but unrecouped from the customer. 35 ILCS 120/6. A tax "credit memorandum" evidences a transferable right to offset the amount of unrecouped tax against other Sales Tax obligations owed to IDOR. *Id.*

Here, most of the Dealers' customers purchased on credit. For some transactions, the Dealers would retain the customer's loan. ROA 11-2, at 115. For many transactions, however, the Dealers would sell the loan receivables to one of two financing companies—debtor Total Finance AC LLC or non-debtor Total Finance, LLC (collectively, the "Financing Companies"). ROA 11-2, at 106; *e.g.*, ROA 11-2, at 268. All such loan sales were governed by a "Master Dealer Agreement," which provided that the Financing Companies would pay the Dealers a discounted "Purchase Price" that *excluded* the Sales Tax. Under the Master Dealer Agreement, the Financing Companies would later pay the Sales Tax to the Dealers, but only if the customer fully paid off the underlying loan. ROA 11-2, at 115, 256–57.[2]

[2] COAC sold its loans to Total Finance AC LLC; Car Outlet sold its loans to Total Finance, LLC. ROA 11-2, at 112–13. The Master Dealer Agreement quoted herein governed the relationship between COAC and Total Finance AC LLC. Car Outlet

Consistent with the Master Dealer Agreement and governing law, the Dealers paid all of the ROT tax owed on the vehicles they sold. ROA 11-2, at 105–06, 114–15, 290. If the loan receivable was sold, the relevant Financing Company paid the relevant Dealer a Purchase Price calculated by discounting the "Amount Financed" by 31% or 32% to account for risk of default and exclusion of Sales Tax. ROA 11-2, at 268; ROA 11-5, at 271–73. The Dealer then booked a receivable from the Financing Company for the Sales Tax amount remitted to IDOR (the "Sales Tax Receivable"). ROA 11-2, at 106–07, 114, 268 (sample entry).

If the customer paid off the loan, the Financing Company paid the Sales Tax amount to the Dealer, satisfying the Sales Tax Receivable. ROA 11-2, at 276–84, 289. If the customer defaulted, the Financing Company had no obligation under the Master Dealer Agreement to pay the Sales Tax amount, and the Dealer wrote off the Sales Tax Receivable as uncollectible for accounting purposes and took a deduction for the uncollectible amount on its federal income tax return. ROA 11-2, at 107, 114, 274 (sample tax return entries), 288 (sample accounting entries). The Dealer then applied to IDOR for a tax credit memorandum in the amount of the Sales Tax that remained unpaid by the customer at the time of default. ROA 11-2, at 114, 275

---

and Total Finance LLC had a materially identical agreement—the only difference being that theirs provided for a 32% discount (rather than 31%) in calculating the Purchase Price. ROA 11-2, at 107.

(sample calculation of unreimbursed tax), 297–300 (repossession documents), 302–03 (sample ST-557 form).

B. IDOR Has Unjustifiably Refused to Grant the Dealers' Tax Credit Applications Since 2015.

For many years, IDOR recognized that COAC and Car Outlet met the requirements to receive tax credit memoranda, and it promptly issued the requested memoranda without objection. ROA 11-2, at 113. Without warning or any relevant tax-law revisions, however, IDOR changed its approach in 2015 and 2016, when the Dealers filed the first set of tax credit applications underlying this appeal.

At that time, COAC sought $448,502 and Car Outlet sought $4,125,845 in tax credit memoranda corresponding to loan defaults between June 2012 and March 2015 (collectively, the "Denied Claims"). ROA 11-2, at 131; *see also* ROA 11-3:1 – 11-4:30 (Schedule of Denied Car Outlet Claims); ROA 11-4:36 – 11-5:5 (Schedule of Denied COAC Claims); ROA 11-5, at 216–17. IDOR did not respond to those requests until October 2018, at which time IDOR issued each Dealer a materially identical, one-page letter and notice of proposed claim denial ("Claim Denial"). ROA 11-2, at 305–08 (October 26, 2018 letter), ROA 11-4, at 32–34 (October 29, 2018 letter). Each Claim Denial letter stated summarily that the Dealer's requests were being denied because the Dealers had not proven that (1) they "bore the burden of the tax" on the defaulted transactions; (2) "the tax paid on an accounts receivable that became a bad debt was included in the federal income tax return on which the

receivable is written off"; and (3) the tax "had been charged off as bad debt on [the Dealer's] books and records in accordance with generally accepted accounting principles ["GAAP"]." ROA 11-2, at 305; ROA 11-4, at 32. IDOR has never attempted to defend the second and third reasons given in its initial Claim Denials. *See* ROA 11-5, at 261 n.21. Nor could it, as IDOR has conceded that the undisputed evidence shows that the Dealers did both of those things. *See* ROA 11-6, at 85–86, 111; ROA 11-2, at 107, 114, 274, 288 (evidence); ROA 11-5, at 258 (so holding).

The Dealers submitted the second set of applications underlying this appeal—totaling $6,441,162, and corresponding to defaults from March 2015 to March 2018—on June 28, 2018, November 7, 2018, November 19, 2018, and February 8, 2019 (collectively, the "Pending Claims"). *See* ROA 11-5, at 147. IDOR has referred these claims for audit, but has not taken any action on them. ROA 11-5, at 129.

C. In the Bankruptcy Proceedings, IDOR Continued to Assert and Abandon Meritless Objections.

On February 13, 2019, the Debtors filed for Chapter 11 bankruptcy. *See* ROA 11-2, at 63. That same day, the Debtors also filed a motion asking the bankruptcy court to rule that the Debtors are entitled to tax credit memoranda for the more-than-$10.88-million in accumulated tax credits that IDOR owed the Dealers on the

Pending and Denied Claims (the "Tax Credits Motion"). ROA 11-2:104 – 11-5:12; ROA 11-2, at 131 (Schedule of Claims).[3]

From the very beginning, it was clear that resolution of the Tax Credits Motion would substantially affect the value of the Debtors' bankruptcy estates and the amount of distributions to their creditors and interest holders. ROA 11-5, at 148. Any tax credit memoranda issued to Debtor COAC undeniably would be an asset of its bankruptcy estate. And recovery of tax credits owed to non-debtor Car Outlet would have a material impact on the assets of the estate of debtor Total Finance Investment Inc. ("TFII"), because the "Marubeni Agreement" assigned substantially all of Car Outlet's assets (including any tax credits Car Outlet secured) to TFII. *See* ROA 11-5, at 133 (¶ 5), 216–17. Indeed, the tax credits were so important to the recoveries of bankruptcy stakeholders that the Official Committee of Unsecured Creditors (the "Committee") requested (and received) permission to participate in the briefing on the Debtors' Tax Credits Motion. Dkt. No. 18, Ex. 1 (Tr. 31:5–8).

IDOR missed the initial deadline to respond to the Debtors' Tax Credits Motion. ROA 11-5, at 219. The Debtors agreed to a 15-day extension, which the bankruptcy court granted. *Id.* (Tr. 29:19); ROA 11-5, at 85, 219; *compare* ROA 11-

[3] The Debtors also identified additional amounts IDOR would owe on claims that had accrued, but had not yet been submitted. ROA 11-2, at 131.

5, at 49. IDOR then requested (and received) two further extensions of that deadline. ROA 11-5, at 88–93; ROA 11-5, at 94–97.

IDOR finally responded on April 10, 2019—nearly two months after the Debtors' motion was filed. IDOR submitted a 28-page Objection ("Objection") that raised solely jurisdictional arguments (many of which IDOR has since abandoned) and did not address the merits of the Tax Credits Motion. *See generally* ROA 11-5, at 98–125. IDOR asked the Court to treat its Objection as a motion to dismiss under the bankruptcy equivalent to Fed. R. Civ. P. 12(b)(1) (Fed. R. Bankr. P. 7012). ROA 11-5, at 99.

At an April 23, 2019 hearing on the Debtors' then-fully-briefed Tax Credits Motion, the bankruptcy court explained that neither Bankruptcy Rule 7012 nor Civil Procedure Rule 12(b) are available in contested matters in bankruptcy, and, further, that IDOR's "novel" request was defective because "there's really no such thing as a motion to dismiss a motion." ROA 11-6, at 12–14 (Tr. 12:6–14:4).[4] For both reasons, the judge indicated that she would deny IDOR's request. *Id.* When IDOR suggested that it planned to address the merits of the Tax Credits Motion if the Court

[4] Disputes in bankruptcy cases are generally classified as either "contested matters" (which are initiated by filing a motion or an objection and are administered under the main bankruptcy case caption) or "adversary proceedings" (which are initiated by the filing of a complaint and are administered under their own case caption). Different procedural rules apply to contested matters and adversary proceedings in bankruptcy. *See* Fed. R. Bankr. P. 7001, 7003, & 9014.

rejected its jurisdictional arguments, the judge replied: "That's it. You filed your response. You spent 28 pages on jurisdiction. You didn't say [a] word about the merits. That's your response as far as I'm concerned." *Id.* at 13 (Tr. 13:14–18).

IDOR nevertheless moved two weeks later, on May 7, 2019, for leave to "supplement" its Objection to address the merits of the Debtors' Tax Credits Motion ("Motion to Supplement" and "Supplemental Objection"). *See* ROA 11-5, at 157–60. Again citing no authority, IDOR claimed that "no party w[ould] be prejudiced" (*id.* ¶ 3) by its introduction of new arguments three months after the Tax Credits Motion was filed and less than a month before the June 5, 2019 deadline to object to the Debtors' proposed plan of reorganization. But as the Committee explained in its objection, "it [was] imperative that creditors know the full amount potentially available to them to make an informed decision" on the plan of reorganization; IDOR's belated introduction of new issues regarding "the Debtors' entitlement" to "a significant asset" of the estates delayed resolution of a critical issue and was therefore prejudicial. ROA 11-5, at 180.

In terms of substance, IDOR's Supplemental Objection offered little in support of its Claim Denials. With respect to loans that the Dealers *sold*, IDOR argued that the Dealers did not bear the burden of the Sales Tax because the Financing Companies purchased the *entire* Amount Financed, including the tax

portion of the loan. ROA 11-5, at 170.[5] Because the Financing Companies collected the Sales Tax from the customers in their roles as servicers of the loans, IDOR argued that it was irrelevant that the Dealers *paid* the tax and were not reimbursed by the Financing Companies unless the customer paid off the loan. *Id.* at 171.

With respect to the loans the Dealers *retained*, IDOR conceded that the Dealers would "qualify for a refund or credit based on the amount of sales tax included in the bad debt" for any defaulted loans. ROA 11-5, at 169. IDOR merely complained that the Dealers had not provided its auditors certain documentation during the audit. But it neither requested discovery nor offered any evidence to contradict the Debtors' submission regarding the amount of the tax credits due on the retained loans. ROA 11-5, at 169–70.

The bankruptcy court conducted another hearing on the Tax Credits Motion on May 29, 2019 (ROA 11-6, at 69–115), and ultimately granted the motion in full on June 11, 2019 (ROA 11-5, at 215–64). The court cited numerous bases for finding that IDOR had waived its Supplemental Objections (ROA 11-5, at 218–20),[6] but it

---

[5] In making this argument, IDOR consistently and erroneously referred to the "Amount Financed" as the "'Purchase Price' against which the finance company's discount would be applied." ROA 11-5, at 170. Under the Master Dealer Agreement, the amount "against which the financ[ing] company's discount would be applied" is called the "Amount Financed"—*i.e.*, the face value of the loan the Financing Company receives. The *discounted* amount *paid to the Dealers* is the "Purchase Price." *See* discussion *infra* p. 36 & ROA 11-2, at 256–57.

[6] For example, the court observed that IDOR was required to raise all arguments in its response to the Debtors' motion; that IDOR failed to do so even after missing

"reluctantly" granted IDOR's Motion to Supplement "so that all the issues can be decided on the merits rather than by default." ROA 11-5, at 219–21, 264. The bankruptcy court then proceeded, in an exhaustive, 49-page memorandum opinion ("June 11 Opinion"), to consider and reject each of IDOR's jurisdictional and merits arguments. ROA 11-5, at 215–64.

In particular, the bankruptcy court rejected IDOR's argument that, because Car Outlet is not a debtor, the court lacked authority under 11 U.S.C. § 505 to decide Car Outlet's entitlement to the requested tax credit memoranda. The court determined that IDOR's argument is contrary to the overwhelming weight of authority—including many of IDOR's own cases—as well as the plain text of Section 505. ROA 11-5 at 228–30, 238–42. The court likewise rejected IDOR's objection that the Tax Injunction Act ("TIA") barred the court from ruling on Car Outlet's tax issues, relying on a Seventh Circuit decision holding that nothing in the TIA precludes a bankruptcy court from resolving a non-debtor's claims if a debtor's assets or liabilities depend on them. ROA 11-5, at 239–40.

On the merits, the bankruptcy court found that the Dealers had met all statutory criteria for the requested tax credit memoranda. ROA 11-5, at 258–60. On

---

deadlines and receiving numerous extensions; that no law or past practice supported its Rule 12 request *or* its belated Motion to Supplement; and that the court, the "debtors, the committee, and all creditors" were in fact prejudiced by IDOR's filing of a supplemental objection "more than three months after its response was originally due." ROA 11-5, at 218–20.

the central disputed issue, the court determined that the Dealers had retained the Sales Tax burden on all loans sold to the Financing Companies because the Purchase Price paid for those loans excluded the Sales Tax, for which the Dealers were reimbursed only if a loan was repaid in full. *Id.* In so holding, the court rejected (as inconsistent with governing law) IDOR's position that a Dealer could not retain the Sales Tax burden on loans sold without recourse. *Id.* at 260–62. Finally, the court noted that IDOR conceded the Dealers' entitlement to tax credit memoranda on loans *retained*, and that IDOR had "failed to raise any question of fact" regarding the applications for those memoranda. *Id.* at 262.

The bankruptcy court thus entered a judgment awarding COAC $6,199,998 in tax credit memoranda and Car Outlet $4,683,261 in tax credit memoranda ("Judgment"). ROA 11-5, at 265. Nine days later, on June 20, 2019, the Debtors and the Committee filed a notice of global settlement, a central component of which was a deal requiring that a portion of the proceeds from the tax credit memoranda be used to pay the claims of general unsecured creditors, paving the Debtors' path out of bankruptcy. ROA 11-12, at 14 (Art. III § 7.b.i).

D. The Bankruptcy Court Properly Rejected IDOR's Meritless Reconsideration Motion.

On June 25, 2019—*two days* before bankruptcy court confirmed the Debtors' plan (ROA 11-11, at 285–88)—IDOR filed a motion to alter or amend the bankruptcy court's judgment under Fed. R. Bankr. P. 9023 (which makes Fed. R.

Civ. P. 59 applicable to bankruptcy cases) ("Rule 59 Motion"). ROA 11-5, at 268. IDOR argued for the first time that Car Outlet and COAC were not entitled to tax credit memoranda because the accounting entries submitted with the original Tax Credits Motion showed that the Financing Companies merely subtracted a flat 31% or 32% from the Amount Financed in calculating the Purchase Price and did not separately subtract the Sales Tax *on top of* the discount. ROA 11-5, at 271–73. IDOR also asserted that the bankruptcy court overlooked a purported question of fact regarding the loans retained, because IDOR had not "verif[ied]" the Debtors' submission that $1,063,328 of the requested tax credits corresponded to retained loans. ROA 11-5, at 276.

Though it was and remains Appellees' position that these arguments were long since waived, Appellees provided IDOR with records regarding the retained loans on September 6, 2019. ROA 11-6, at 142 – ROA 11-7, at 8.

On September 12, 2019, the bankruptcy court denied IDOR's Rule 59 Motion, holding that IDOR had neither presented "newly discovered evidence" nor shown the kind of "manifest error of fact or law" that would be necessary to justify its attempted "third bite at the proverbial apple." ROA 11-7, at 10–11. "IDOR could have easily made" its first argument, which was based on exhibits to the Debtors' original motion, in any of its numerous prior briefs. ROA 11-7, at 13. And IDOR's second objection simply ignored the bankruptcy rules, which put the onus on *IDOR*

to serve discovery requests, identify contrary evidence, and seek an evidentiary hearing if it truly believed that a fact dispute precluded resolution of the Tax Credits Motion. ROA 11-7, at 14–15. IDOR did none of the above.

SUMMARY OF ARGUMENT

Though IDOR's opening brief does its best to obfuscate the relevant issues through meritless and often indecipherable attacks on the bankruptcy court's rulings, in reality, this case is very simple. COAC and Car Outlet paid over $10 million in Sales Taxes that were not recouped from defaulting customers. Because COAC and Car Outlet bore the burden of those Sales Taxes, Illinois law entitles them to tax credit memoranda in the amount of the unrecouped Sales Taxes. And because enforcing that entitlement would have a significant effect on the bankruptcy estates of COAC and TFII, the bankruptcy court had authority to order IDOR to issue the tax credit memoranda. In so ruling, the bankruptcy court did not even come close to committing a reversible error.

On appeal, IDOR nonetheless contends that this Court should reverse the bankruptcy court's judgment for three reasons. None has any merit.

First, IDOR challenges the bankruptcy court's authority to decide the Tax Credits Motion as to non-debtor Car Outlet. But IDOR simply ignores governing law. Jurisdiction is secure under 28 U.S.C. § 1334, which grants a bankruptcy court "related to" bankruptcy jurisdiction over any dispute that "could *conceivably* have

any effect on the estate being administered in bankruptcy." *Bush v. United States*, 939 F.3d 839, 846 (7th Cir. 2019) (quotation marks omitted). Resolution of the Tax Credits Motion as to Car Outlet has a direct and obvious effect on the bankruptcy estate of TFII, which stands to receive the relevant tax credit memoranda by assignment.

IDOR's argument that Section 505 of the Bankruptcy Code did not allow the bankruptcy court to rule on tax issues for Car Outlet fares no better. Section 505 confers on bankruptcy courts broad authority to decide "the amount or legality of ***any*** tax" (11 U.S.C. § 505(a)(1) (emphasis added)), and the limited exceptions to that authority do not exempt disputes involving the tax liability of a non-debtor or otherwise apply here (11 U.S.C. § 505(a)(2)). IDOR's contrary arguments ignore the text, structure, and context of Section 505, as well as a long line of cases—including *In re Stoecker*, 179 F.3d 546, 549 (7th Cir. 1999), *aff'd sub nom. Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15 (2000)—holding that bankruptcy courts can resolve the tax rights or liabilities of non-debtors when they affect a bankruptcy estate.

The fact that Section 505 authorized the bankruptcy court's rulings on Car Outlet's entitlement to tax credit memoranda forecloses IDOR's argument that the Tax Injunction Act barred those rulings. Section 505 is a recognized exception to the TIA, and the Seventh Circuit has held that the TIA does not bar a bankruptcy court's

resolution of a non-debtor's rights if a debtor's rights "depend[] on" them. *Stoecker*, 179 F.3d at 549.

Second, IDOR challenges the bankruptcy court's determination that the Dealers bore the burden of the Sales Tax on loans sold to the Financing Companies. The bankruptcy court committed no clear error in making that factual finding. IDOR suggests that by selling the loans "without recourse" the Dealers transferred the Sales Tax burden. But as the bankruptcy court found, selling the loans without recourse does not matter because the Dealers and the Financing Companies explicitly structured the sales so that the Dealers retained the burden of the Sales Tax.

IDOR also contends that the Dealers did not retain the Sales Tax burden because Sales Taxes were not deducted on top of the contractually required 31% or 32% discount in calculating the Purchase Price for loans sold to the Financing Companies. But IDOR waived this argument by waiting to raise it until after the bankruptcy court had entered judgment. Further, the language, purpose, and performance of the Master Dealer Agreement establish that the Dealers and Financing Companies did in fact deduct the Sales Tax from the Purchase Price so that the Sales Tax burden remained on the Dealers.

Third, IDOR challenges the bankruptcy court's refusal to reopen the record and allow discovery after judgment so that IDOR could consider whether it disputes the Dealers' submission regarding the total value of the loans they retained. That

ruling was no abuse of discretion. IDOR never sought discovery in the bankruptcy proceedings, and its belated attempt to do so was improper. Moreover, IDOR has since received the documents it said might create a fact dispute, yet *still* does not identify evidence contradicting the bankruptcy court's ruling on the retained loans.

In short, the bankruptcy court's judgment should be affirmed in its entirety.

ARGUMENT

I. The Bankruptcy Court Had Authority to Decide the Tax Credit Memoranda Dispute.

IDOR advances three challenges to the bankruptcy court's authority to resolve the Tax Credits Motion as to Car Outlet.[7] Each boils down to an objection that bankruptcy courts cannot decide the rights of non-debtors like Car Outlet, even when those rights directly impact the assets of a debtor and its bankruptcy estate. IDOR's arguments contradict well-established law.

A. The Bankruptcy Court Had Jurisdiction Under 28 U.S.C. § 1334.

IDOR argues that, because Car Outlet was not a bankruptcy debtor, the bankruptcy court lacked jurisdiction under 28 U.S.C. § 1334 to decide that Car Outlet is entitled to tax credit memoranda. ROA 11-5, at 242–43. IDOR misconceives the scope of Section 1334.

[7] On appeal, IDOR does not challenge the bankruptcy court's authority to decide the Tax Credits Motion as to *COAC*. *See* IDOR Br. 4 (¶¶ 1–2).

Section 1334 grants bankruptcy courts jurisdiction over three "categories of disputes: [1] those 'arising in' bankruptcy litigation, [2] those 'arising under' the Bankruptcy Code, and [3] those 'related to' the resolution of the bankruptcy proceeding." *Bush v. United States*, 939 F.3d 839, 844 (7th Cir. 2019); *see also* A1.[8] Bankruptcy courts' "related to" jurisdiction is exceptionally broad, existing anytime a dispute "'could conceivably have any effect on the estate being administered in bankruptcy.'" *Id.* at 846 (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995)).

That test is easily met here, where resolution of Car Outlet's rights to the requested tax credit memoranda always was expected to (and will in fact) have a definite "effect on [an] estate being administered in bankruptcy." *Id.* Although Car Outlet was not itself a debtor, it is required under the Marubeni Agreement "to give any credit memos it receives (and thus the proceeds of the sale of the credit memos) to one of the debtors," TFII. ROA 11-5, at 242. Specifically, the Marubeni Agreement provides:

> [I]f any of the Asset Sellers [including Car Outlet] receive any sales Tax refunds relating to sales taxes that were paid by one of the Asset Sellers in connection with a transaction underlying an Acquired Contract, such Asset Seller shall promptly pay or cause to be paid to Finance Buyer [defined as Debtor Total Finance Investment Inc.] all such refunds received by such Asset Seller.

---

[8] References to the Addendum of pertinent statutes and regulations required by the Federal Rules of Bankruptcy Procedure are cited herein as A1, *et seq.*

ROA 11-5, at 133 (¶ 5) (quoting Marubeni Agreement § 9.1(c)). Resolution of Car Outlet's rights thus has an obvious and direct "effect on the estate" of TFII because any tax credit memoranda recovered by Car Outlet will become an asset of TFII's estate and will be used to fund distributions to the Debtors' creditors and interest holders. ROA 11-5, at 242; ROA 11-12, at 14.

IDOR nonetheless contends that Car Outlet's agreement to transfer to TFII any credit memoranda that Car Outlet received from IDOR did not confer jurisdiction because the Marubeni Agreement merely gave TFII a *contractual* right to any tax credit memoranda obtained by Car Outlet and did not assign Car Outlet's underlying *statutory* right to the memoranda. IDOR Br. 34–35. IDOR identifies no legal support for that argument, which is in any event waived because IDOR never raised it at any point in its protracted bankruptcy court briefing. *See In re Image Worldwide, Ltd.*, 139 F.3d 574, 582 (7th Cir. 1998) ("Arguments not presented to the bankruptcy court are waived on appeal.").

Below, IDOR instead argued that Car Outlet's agreement to convey any credit memoranda it received to TFII extinguished Car Outlet's statutory right to any tax credit memoranda. The bankruptcy court properly rejected that argument because, while a dealer-retailer may not assign its right to bring a "direct action for a [tax] refund" (*Citibank, N.A. v. IDOR*, 2017 IL 121634, ¶ 68), the credit memoranda

themselves are fully assignable under Illinois law (35 ILCS 120/6).[9] As the bankruptcy court found, Car Outlet assigned only the credit memoranda themselves—not the statutory right to file a claim. ROA 11-5, at 243 n.8. IDOR "does not dispute" that factual determination on appeal. IDOR Br. 34.

Waiver aside, IDOR's newfound jurisdictional objection is completely meritless. IDOR ignores the well-established test for "related to" jurisdiction (*see Bush*, 939 F.3d at 846) in favor of an undeveloped discussion of the definition of "property" of the estate. IDOR fails to identify how that definition is at all relevant to Section 1334. Nor do the cases it cites shed any light on IDOR's theory, as none even mentions "jurisdiction" or "1334." *See, e.g.*, *In re Cent. Ill. Energy Coop.*, 526 B.R. 786, 794 (Bankr. C.D. Ill. 2015); *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (2019).

IDOR appears to be relying on an obsolete test that pre-dates related-to jurisdiction and Section 1334(b), and was rejected by the 1978 Bankruptcy Reform Act—because it engendered "unnecessary," "expensive," and "protracted" jurisdictional litigation. H.R. Rep. No. 95-595, at 24–46, 48–49 (1978) (providing that "[p]ossession of the res[] that is the subject of a particular proceeding will no[]

[9] In relevant part, ROTA Section 6 provides that a "credit memorandum may be assigned and set over by the lawful holder thereof, subject to reasonable rules of the Department, to any other person who is subject to this Act [and a variety of other acts]." 35 ILCS 120/6.

longer be relevant"); *see also In re Turner*, 724 F.2d 338, 341 (2d Cir. 1983); *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) ("The jurisdictional grant in § 1334(b) was a distinct departure from the jurisdiction conferred under previous Acts, which had been limited to either possession of property by the debtor or consent as a basis for jurisdiction.").[10] The 1978 Act instead conferred on bankruptcy courts broad "in personam jurisdiction over all proceedings, whether or not involving a specific item of property." H.R. Rep. No. 95-595, at 48–49.

Consistent with this history, the Supreme Court has held that § 1334(b) "give[s] … bankruptcy courts … jurisdiction over more than simple proceedings involving the property of the debtor or the estate"—and in particular, that § 1334(b) jurisdiction extends to "suits between third parties which have an effect on the bankruptcy estate." *Celotex*, 514 U.S. at 307–08 & n.5. Bankruptcy courts have likewise exercised related-to jurisdiction over a wide variety of third-party disputes that would affect "the amount of property for distribution [i.e., the debtor's estate] or the allocation of property among creditors" (*In re Mem'l Estates, Inc.*, 950 F.2d 1364, 1368 (7th Cir. 1991)), including (i) a third-party claim that, if successful, would trigger an indemnification obligation by the debtor (*Apex Inv. Assoc. v. TJX*

[10] Originally codified in 28 U.S.C. § 1471(b), related-to jurisdiction was recodified in § 1334 as part of the 1984 Bankruptcy Amendments and Federal Judgeship Act. Thus, the legislative history and older authorities refer to Section 1471 when discussing the scope of "related to" jurisdiction.

Cos., 121 B.R. 522 (N.D. Ill. 1990)); (ii) a damage claim against non-debtors for aiding and abetting fraudulent transfers (*In re Glick*, 568 B.R. 634, 653–54 (N.D. Ill. 2017)); and (iii) a third-party class action against a creditor that would impact the value of the creditor's secured claim on the estate (*Janazzo v. FleetBoston Fin. Corp.*, 2002 WL 54541, at *3 (N.D. Ill. Jan. 15, 2002)).

Plainly, the bankruptcy court had "related to" jurisdiction over the parties' dispute.

B. The Court Had Authority to Resolve the Tax Credit Memoranda Dispute Under 11 U.S.C. § 505(a).

IDOR further argues that, because Car Outlet is not a debtor, the bankruptcy court had no authority under Section 505(a) of the Bankruptcy Code to rule on whether Car Outlet is entitled to tax credit memoranda.[11] This argument, too, is meritless. It ignores the text and structure of Section 505(a), as well as governing precedent.

Section 505(a) is divided into two paragraphs. Paragraph (a)(1) broadly authorizes a bankruptcy court to "determine the amount or legality of ***any tax***, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated

[11] IDOR's suggestion that the bankruptcy court overlooked its argument (IDOR Br. 30) is incorrect. The bankruptcy court specifically considered and rejected IDOR's argument as inconsistent with the statute's plain text and longstanding precedent. ROA 11-5, at 238–40.

by a judicial or administrative tribunal of competent jurisdiction," "except as provided in § 505(a)(2)." 11 U.S.C. § 505(a)(1) (emphasis added); A2–A3. IDOR does not dispute that paragraph (a)(1)'s grant of power includes the power to adjudicate disputes over tax credit memoranda.

Paragraph (a)(2) then enumerates three exceptions to the broad authority conferred by paragraph (a)(1). IDOR points to the second exception (IDOR Br. 30–31), set forth in subparagraph (B), which provides that a "court may not so determine … any right of the estate to a tax refund, before the earlier of-- (i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or (ii) a determination by such governmental unit of such request." 11 U.S.C. § 505(a)(2)(B). IDOR argues that, because the Section 505(a)(2)(B) refund-waiting-period exception references "the trustee," it should be read as creating an additional requirement for relief under Section 505(a)—namely, that tax refund or credit claims must be filed *by a bankruptcy trustee* (or debtor) before a bankruptcy court has authority to resolve them.

IDOR's argument is "contrary to the broad grant of jurisdiction in § 505(a)(1)." *In re Luongo*, 259 F.3d 323, 329 (5th Cir. 2001). As the bankruptcy court observed, "§ 505(a)(1) contains no language limiting its application to taxes owed by a debtor." ROA 11-5, at 238–39. If a bankruptcy court has jurisdiction

under Section 1334 to consider a tax dispute, then the plain language of Section 505(a)(1) permits a bankruptcy court to decide it.

Furthermore, Section 505(a)'s sole reference to "trustee" appears in the *exception* created by paragraph (2)(B). Thus, to the extent it creates any limit at all, the reference to "trustee" is best read as limiting the circumstances in which *paragraph (2)(B)—i.e.*, the refund waiting period—applies. In other words, if paragraph (2)(B) does not apply to Car Outlet because it is not a debtor, its credit memoranda requests are simply subject to paragraph (a)(1)'s grant of broad authority to decide such tax-related matters. And if paragraph (2)(B) does apply, it simply mandates a 120-day waiting period before the bankruptcy court may decide a tax refund dispute. IDOR does not dispute that the requisite 120 days passed between the last of the Dealers' tax credit memoranda requests (submitted February 8, 2019) and the bankruptcy court's June 11 Opinion. *See* ROA, 11-5, at 147 (schedule of claims); *see generally* IDOR Br. 30–31 (§ 505 discussion).

Had Congress intended a broader limitation on a bankruptcy court's authority to resolve "any tax" dispute under Section 505(a)(1), it would have done one of two things. It would have inserted language in paragraph (a)(1) limiting a bankruptcy court's authority to deciding disputes over taxes owed or paid by a "debtor," "estate," or "trustee." Or it would have added a fourth exception in paragraph (a)(2) excluding disputes regarding non-debtors' taxes (or refunds) from the scope of paragraph

(a)(1). Congress did neither of those things. *Cf.* ROA 11-5, at 238–39 (finding "no express limitation [in Section 505] that the tax be owed only by or to a debtor").

As paragraph (a)(2) confirms, Congress knew how to limit Section 505(a)(1). And it did so expressly when it wanted to. The limitations in paragraph (a)(2) are framed in clear, restrictive language. The absence of any express exclusion of non-debtor tax disputes thus speaks volumes. There is no reason to believe that Congress *implied* such an exclusion through a passing reference to "trustee" in a provision with the manifest intent of simply imposing a *waiting period* before a bankruptcy court may resolve tax refund claims. *See CFTC v. Worth Bullion Grp., Inc.*, 717 F.3d 545 (7th Cir. 2013) ("Statutory interpretation is guided not just by a single sentence or sentence fragment, but by the language of the whole law, and its object and policy." (quotation marks omitted)).

IDOR's argument that Section 505(a)(1) is confined to claims filed by trustees also runs counter to controlling precedent. The Seventh Circuit has squarely held that bankruptcy courts have authority under Section 505(a)(1) to resolve the tax rights or liabilities of non-debtors when they affect a bankruptcy estate. *In re Stoecker*, 179 F.3d 546 (7th Cir. 1999). In *Stoecker*, IDOR filed a tax penalty claim in the individual bankruptcy of William Stoecker, which turned entirely on whether Stoecker's former company (and non-debtor) Chandler Enterprises should have paid taxes on the purchase of a corporate jet. *Id.* at 550. The Seventh Circuit held that the

bankruptcy court had authority under Section 505(a)(1) to decide Chandler's liability, because IDOR's right to collect "a penalty in lieu of taxes from Stoecker's estate … depend[ed] on whether Chandler owed use tax." *Id.* at 549.[12] As in *Stoecker*, TFII's right to the requested credit memoranda entirely "depend[s] on" whether IDOR "owe[s]" those credit memoranda to Car Outlet.[13]

In sum, the temporal restriction in Section 505(a)(2)(B) did not preclude the bankruptcy court from deciding that Car Outlet is entitled to tax credit memoranda.

C. The Tax Injunction Act Does Not Apply to Section 505 Disputes.

IDOR further argues that the TIA barred the bankruptcy court from ruling on Car Outlet's right to tax credit memoranda. The TIA provides that "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts

---

[12] While *Stoecker* controls here, it bears noting that courts across the nation have likewise exercised authority under Section 505(a) "to determine the tax liability of parties other than the debtor." *In re Wolverine Radio Co.*, 930 F.2d 1132, 1138 (6th Cir. 1991); *see, e.g.*, *In re Goldblatt Bros., Inc.*, 106 B.R. 522, 528 (Bankr. N.D. Ill. 1989); *In re John Renton Young, Ltd.*, 87 B.R. 635, 637 (Bankr. D. Nev. 1988); *In re Jon Co., Inc.*, 30 B.R. 831, 833 (D. Colo. 1983); *In re Major Dynamics, Inc.*, 14 B.R. 969, 972 (Bankr. S.D. Cal. 1981); *cf. Quattrone Accountants, Inc. v. I.R.S.*, 895 F.2d 921, 924–25 (3d Cir. 1990) (surveying the legislative history and concluding "that Section 505 does not deny the bankruptcy court jurisdiction of claims of non-debtors").

[13] IDOR offers an extended (and inscrutable) discussion of how the Seventh Circuit's recent *Bush* decision supposedly affects IDOR's paragraph (2)(B) argument. IDOR Br. 31. But *Bush* addressed neither a bankruptcy court's authority to decide disputes over a non-debtor's taxes nor the proper application of paragraph (2)(B). *Bush*, 939 F.3d at 842.

of such State." 28 U.S.C. § 1341. But numerous courts, including the Seventh Circuit, have held that Bankruptcy Code Section 505(a) supersedes the TIA by expressly providing that bankruptcy courts can decide tax issues within Section 505(a)'s broad scope. *See Stoecker*, 179 F.3d at 549; *City Vending of Muskogee, Inc. v. Okla. Tax Comm'n*, 898 F.2d 122, 123–24 (10th Cir. 1990). IDOR does not dispute that law. IDOR Br. 28. Yet it maintains that the TIA applies to the dispute over Car Outlet's right to tax credit memoranda because Car Outlet's non-debtor status pushes that dispute outside of Section 505(a)'s scope.

We have already explained why IDOR is wrong about Section 505(a)'s application to non-debtor tax issues. *See supra* pp. 23–27. And *Stoecker* confirms that the TIA is no barrier to deciding disputes over a non-debtor's taxes under Section 505(a). *Stoecker* specifically rejected an argument that the TIA prevents federal courts from deciding a dispute over a non-debtor's tax liability under Section 505(a)(1) where a debtor's rights or obligations "depend[] on" the non-debtor's tax liability. *Stoecker*, 179 F.3d at 549; *see also, e.g.*, *In re Pontes*, 280 B.R. 20, 26–27 (Bankr. D.R.I. 2002) ("Federal Appeals Courts have uniformly ruled that 11 U.S.C. § 505 carves out a well recognized exception to … the T.I.A. … [and] that Congress intended the more specific Bankruptcy Code provision to override and super[s]ede the older general language of the T.I.A."), *aff'd*, 310 F. Supp. 2d 447 (D.R.I. 2004). As controlling precedent, *Stoecker* forecloses IDOR's TIA argument. The

bankruptcy court resolved the rights of non-debtor Car Outlet to tax credit memoranda because *debtor TFII* holds a contractual right to receive any tax credit memoranda obtained by Car Outlet. *See* ROA 11-5, at 242.

IDOR argues that *Stoecker* is distinguishable because Car Outlet's claims are independent of *COAC's* claims. IDOR Br. 29. That argument ignores the fact that the rights of *another debtor*—TFII—*do* "depend" on Car Outlet's. IDOR gets no further by pointing to *Stoecker*'s observation that "no one is seeking an injunction against the state's going after [the non-debtor] for the taxes that the state believes [it] owes it." 179 F.3d at 549. Debtors seek no such injunction here, but instead request what is effectively a return of the taxes erroneously paid to IDOR.

IDOR also incorrectly argues that the Seventh Circuit's earlier *LaSalle* decision somehow contradicts the bankruptcy court's application of *Stoecker*. Not only does *LaSalle* address a different statute (the Anti-Injunction Act), but the debtors in *LaSalle* asked the bankruptcy court "to enjoin the IRS from assessing [a tax] penalty"—*which they did not contest was "lawful, due and owing"*—solely because assessment of that penalty supposedly would complicate the plan of reorganization by adversely affecting certain non-debtors' credit. *In re LaSalle Rolling Mills, Inc.*, 832 F.2d 390, 391, 393 (7th Cir. 1987). In finding "no indication in the Bankruptcy Code that Congress intended to super[s]ede the Anti-Injunction Act" merely "to protect a reorganization," the Seventh Circuit specifically noted that

the analysis would be different had the debtors challenged the amount or legality of the tax under Section 505(a)(1). *Id.* at 394. IDOR's remaining cases (IDOR Br. 28) are inapposite for the same reasons—none involve Section 505 challenges in which a debtor's rights or liabilities depended on the rights or liabilities of a non-debtor.

As the bankruptcy court concluded, *Stoecker*'s rejection of IDOR's TIA argument controls here.

II. The Bankruptcy Court Committed No Reversible Error in Ruling that the Dealers Are Entitled to Tax Credit Memoranda for the Loans Sold to the Financing Companies.

IDOR offers two challenges to the bankruptcy court's finding that the Dealers satisfied the legal requirements for issuance of the tax credit memoranda they requested on defaulted loans sold to the Financing Companies. Neither challenge has merit, much less establishes the clear error required for reversal. *See marchFIRST*, 573 F.3d at 416.

All parties agree that the Dealers' tax-credit-memoranda applications are governed by ROTA Section 6, which authorizes a credit for tax "erroneously" paid, as long as "the claimant bore ***the burden of such amount*** and has not been relieved thereof nor reimbursed therefor and has not shifted such burden directly or indirectly." 35 ILCS 120/6 (emphasis added); A4–A5. Under that statutory provision and related regulations, a retailer is entitled to a tax credit memorandum for unrecouped Sales Taxes if the retailer (a) bore the burden of those taxes; (b) wrote

off those taxes as bad debt in its books; and (c) claimed those taxes as a deduction on its federal tax returns. *See id.*; Ill. Admin. Code, tit. 86, § 130.1960(d) (eff. Dec. 1, 2000); Ill. Admin. Code, tit. 86, § 130.1960(d) (eff. Jan. 26, 2018); A6–A11.[14]

For the loans sold to the Financing Companies, the only disputed element in the bankruptcy court and on appeal has been whether the Dealers bore the burden of the Sales Taxes. *See* ROA 11-5, at 258 ("[T]here is no dispute that COAC's and Car Outlet's tax receivables became bad debts that were properly written off under GAAP and were deducted from their federal tax returns."). The bankruptcy court found that the evidence overwhelmingly proved that the Dealers *in fact did* "bear the full burden of the sales tax they paid to the state on defaulted loans." ROA 11-5, at 261. In particular, the court made the following findings:

- Every contract sold to the Financing Companies was sold pursuant to a Master Dealer Agreement (ROA 11-5, at 248 & n.11); that agreement excluded the sales tax from the "Purchase Price" the Financing Companies paid; the tax would be "reimburse[d]" only if "the Contract [was] fully paid off by Customer" (ROA 11-5 at 249–50 & n.13);
- As a matter of practice, the Sales Tax was *in fact* "excluded from the initial purchase price" paid to the Dealers (ROA 11-5, at 261);
- When they sold a loan, the Dealers would "create[] an account receivable for the potential reimbursement of sales tax that would be due from Total

[14] Some of the tax-credit-memoranda applications are subject to the pre-January 26, 2018 version of the regulations and others are subject to the post-January 26, 2018 version. But for purposes of the parties' present dispute, the two versions are not materially different and do not require separate analyses. Notably, IDOR attached only the current regulations to its briefing.

Finance if the customer paid Total Finance in full under the contract" (ROA 11-5, at 258);

- If a customer defaulted, such receivable was "written off as bad debt in accordance with GAAP and taken as a deduction on [the Dealers'] federal income tax returns" (*id.*);
- The Dealers had "no right to reimbursement from any source for the sales tax they paid on loans they sold that later defaulted" (ROA 11-5, at 258); and
- For defaulted loans, the dealers "never receive[d] the additional payment covering sales tax on defaulted loans" (ROA 11-5, at 261).

These findings—which the evidence amply supports—foreclose IDOR's challenges to the bankruptcy court's ruling that the Dealers bore the Sales Tax burden for the loans sold to the Financing Companies.

A. The Dealers' Sale of Certain Loans Without Recourse Does Not Warrant Overturning the Bankruptcy Court's Ruling.

In challenging the bankruptcy court's ruling, IDOR first argues that the Dealers did not retain the Sales Taxes burden because they sold the loans (including the right to collect the Sales Taxes that customers financed) without recourse. IDOR Br. 39–40. As the bankruptcy court recognized, however, nothing in the governing statute or regulations required the Dealers to retain the loans or the right to collect Sales Tax under the loans. ROA 11-5 at 261–62. IDOR's argument incorrectly conflates "the burden of a default on the entire loan" with the "burden of the sales tax … paid to the state on defaulted loans." ROA 11-5, at 261. What matters is whether the Dealers retained the Sales Tax burden.

Even though the Financing Companies may have owned the loans and collected the Sales Tax, the Dealers and the Financing Companies purposely structured their transaction so that the burden of the Sales Tax remained on the Dealers. Sales Tax was deducted from the Purchase Price. ROA 11-2, at 115, 268–69. The Dealers booked a receivable for the Sales Tax. ROA 11-2, at 106–07, 114, 268. If a customer defaulted, the Dealers would not receive any Sales Tax reimbursement from the Financing Companies and thus wrote off the Sales Tax receivable as bad debt and took a federal tax deduction for it. ROA 11-2, at 107, 114, 274, 288. Only when a customer paid off a loan in full did the Financing Companies pay the Dealers the amount of the Sales Tax. ROA 11-2, at 276–84, 289.

IDOR nonetheless argues that the Financing Companies necessarily purchased the "burden" of the Sales Tax because they "could collect 99.9% of the Contract amounts from purchasers yet, under the [Master Dealer Agreement], [the Dealers] would not be entitled to any payment of the contingent 'sales tax' receivable" until 100% of the loan was repaid. IDOR Br. 39. But that argument only underscores why IDOR's loan-sale argument fails: If a customer defaulted before "100% of the amount due under the Contracts [was] collected," the Financing Companies got to *keep* any partial Sales Tax reimbursement they had collected, even though it was the Dealers that had fronted the tax to IDOR. *Id.* If the customer repaid the loan in full, the Financing Companies had to convey all the tax they collected to

the Dealers. As a matter of economic substance, then, the Dealers bore the burden of default on the Sales Tax right up until the customer paid the last penny owed. And the Financing Companies, far from bearing any Sales Tax burden, effectively received a windfall *bonus* to the extent that a customer repaid some Sales Tax before defaulting.

B. IDOR's Newfound Theory Regarding Calculation of the Loan Purchase Price Cannot Justify Reversal of the Bankruptcy Court's Ruling.

IDOR further argues that this Court must reverse the Judgment because the bankruptcy court supposedly misunderstood precisely how the Sales Tax was deducted from the Purchase Price. According to IDOR, the bankruptcy court believed that, pursuant to the Master Dealer Agreement, the Sales Tax was subtracted *on top of* the standard 31% or 32% discount in calculating the Purchase Price for loans, but in practice the Dealers deducted only the 31% or 32% discount. IDOR Br. 44–45. IDOR's argument does not even come close to warranting reversal.

IDOR Waived the Purchase-Price Argument. As a threshold matter, the bankruptcy court did not abuse its discretion in finding that IDOR waived its argument about calculation of the Purchase Price. ROA 11-6, at 10–13. IDOR raised the argument for the first time in its Rule 59 Motion—after the bankruptcy court had already entered judgment. ROA 11-6, at 11–13; *see also* ROA 11-5, at 270–75. That is too late. "[A] motion to alter or amend a judgment is not appropriately used to

advance arguments or theories that could and should have been made before the district court rendered a judgment, or to present evidence that was available earlier." *LB Credit Corp. v. Resolution Tr. Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1995) (citations omitted). Yet IDOR based its Rule 59 Motion *solely* on evidence submitted in the Debtors' original Tax Credits Motion. ROA 11-7, at 12–13; *compare* ROA 11-5, at 268–75. The bankruptcy court properly found the Purchase-Price argument waived and denied the Rule 59 Motion on that basis. *See Mungo v. Taylor*, 355 F.3d 969, 978 (7th Cir. 2004) ("Arguments raised for the first time in connection with a motion for reconsideration … are generally deemed to be waived."); *In re Outboard Marine Corp.*, 386 F.3d 824, 828 (7th Cir. 2004) (same).

IDOR disagrees, contending that it raised its current Purchase-Price argument in its Supplemental Objection before the bankruptcy court entered judgment. IDOR is mistaken.

IDOR points to the following two sentences from its Supplemental Objection:

> In addition, notwithstanding the Master Dealer Agreement that provided that sales taxes would not be included in the "Purchase Price" against which the finance company's discount would be applied and that the finance company would only reimburse [Car Outlet] and COAC for sales taxes if and when the installment contract was paid in full, the discounted amount paid by the finance company was based on a "Purchase Price" that included the sales tax. (Motion at Ex. E, p. 2.) In other words, the consideration paid by the finance companies included consideration for the sales taxes that were included in the "Purchase Price" and which, as part of the amount included in the installment contract, were sold to the finance companies.

ROA 11-5, at 170. While these sentences mention the term "Purchase Price," the context shows that IDOR offered the sentences in support of its argument about what was included in the *loan value sold to the Financing Companies*—that is, IDOR's argument was that the Dealers' sale of the loans (and the right to collect Sales Tax) without recourse transferred the Sales Tax burden to the Financing Companies. *Compare* ROA 11-5, at 170 (IDOR Supplemental Objection) (defining the "Purchase Price" as the amount "*against which* the finance company's discount would be applied" (emphasis added)); *with* ROA 11-2, at 256–57 (Master Dealer Agreement) ("*Amount Financed*" refers to the figure against which the discount was applied). That argument has nothing to do with IDOR's current argument about how the *Purchase Price received by the Dealers* was calculated. IDOR Br. 41–44.

In any event, the two ambiguous sentences held up by IDOR—which were buried in 41 pages of briefing in opposition to the Tax Credits Motion and were not a subject of elaboration at oral argument (*see* ROA 11-6, at 76–84)—are far too oblique and undeveloped to demonstrate that the bankruptcy court abused its discretion in ruling that IDOR waived its current Purchase-Price argument. *Weinstein v. Schwartz*, 422 F.3d 476, 477 n.1 (7th Cir. 2005) ("The failure to develop an argument constitutes a waiver."); *Kramer v. Banc of Am. Sec., LLC*, 355 F.3d 961, 964 n.1 (7th Cir. 2004) ("We have repeatedly made clear that perfunctory and undeveloped arguments that are unsupported by pertinent authority, are waived.").

Indeed, the bankruptcy court's waiver determination was particularly justified here given the prejudice that the Debtors and their creditors would have experienced if IDOR had been allowed to belatedly raise its Purchase-Price argument. *See Hecker v. Deere & Co.*, 556 F.3d 575, 591 (7th Cir. 2009) (lower court "was within its discretion to reject [a] late shift in focus … that would have been highly prejudicial to the [opposing party]"). IDOR failed to articulate its theory until after the court had entered judgment and stakeholders in the bankruptcy had reached a global settlement *in reliance* on that judgment. *See supra* pp. 13–14. IDOR's delay also deprived the Debtors of any opportunity to develop rebuttal evidence to support their reading of the Master Dealer Agreement, such as affidavits reflecting the contracting parties' understanding that the Agreement permitted them to exclude the Sales Tax as part of the 31% or 32% discounts.

Given this record, the bankruptcy court did not remotely abuse its discretion in finding that IDOR waived its newfound Purchase Price argument. *See Mungo*, 355 F.3d at 978 (no abuse of discretion in bankruptcy court's determination that argument raised for the first time in a motion for reconsideration was waived); *LB Credit*, 49 F.3d at 1268 (district court "by no means" abused its discretion in denying Rule 59 motion where movant had every opportunity to advance its argument prior to the court's judgment).

IDOR's Purchase-Price Argument Is Meritless. Waiver aside, IDOR's Purchase-Price argument does not warrant overturning the bankruptcy court's finding that the Dealers bore the burden of the Sales Tax for the loans sold to the Financing Companies. Even if the bankruptcy court misunderstood precisely how Sales Taxes were deducted from the Amount Financed in arriving at the Purchase Price, it would not change the fact that the Sales Taxes were actually deducted. And it certainly would not render the bankruptcy court's ultimate finding that the Dealers bore the burden of the Sales Tax clearly erroneous. That ruling has overwhelming support in the Master Dealer Agreement, the parties' course of dealing, and their manifest intent.

Consider first the language of the Master Dealer Agreement. It expressly placed the burden of the Sales Tax on the Dealers:

> For each Contract Total [Finance] agrees to purchase, Total [Finance] will pay Dealer the 'Amount Financed' as reflected in the Contract, less a 31% discount and the amount paid in Sales and Use Tax (as detailed below).
>
> * * *
>
> In regards to the payment of the ***Sales and Use Tax*** by Dealer, Total [Finance] ***will not reimburse Dealer for those amounts until the Contract is fully paid off*** by Customer."

ROA 11-2, at 256–57 (§ 2) (emphasis added). Under the Agreement, Sales Tax was to be deducted from the Amount Financed in calculating the Purchase Price, and Dealers were to receive no reimbursement of Sales Tax payments if the customer

defaults. The Master Dealer Agreement thus manifests a clear intent to have the Dealers bear the Sales Tax burden.

The parties' course of dealing is completely consistent with that intent. When a loan was sold, the Dealers received a Purchase Price calculated by applying a 31% or 32% discount to the Amount Financed. *E.g.*, ROA 11-2, at 268. Simultaneously, the Dealers booked a "Sales Tax Receivable" for the precise amount of tax remitted to IDOR on the transaction, which they recognized as income on their tax returns. ROA 11-2, at 106–07, 114, 268. If a customer repaid a loan in full, the Financing Companies would pay the Dealers the amount of the Sales Tax. ROA 11-2, at 276–84, 289. And if a customer defaulted, the Dealers would write off the Sales Tax Receivable as uncollectible for accounting purposes and take a corresponding deduction for the uncollectible amounts on their federal income tax returns. ROA 11-2, at 107, 114, 274, 288.

IDOR contends that all of this evidence should be disregarded because Sales Taxes were not subtracted *on top of* the 31% or 32% discount in calculating the Purchase Price, as the Master Dealer Agreement supposedly required. But the question here is not *how* the Dealers and Financing Companies subtracted Sales Taxes or *how* they were supposed to do so. The question is *whether* they did so. On that question, the evidence allows only one answer: The contracting parties' clear intent and consistent conduct shows that they did in fact subtract the Sales Tax in

calculating the Purchase Price and ensured that the Sales Tax burden remained on the Dealers until the loans were paid off in full. That the Sales Tax subtraction was *subsumed* in the 31% or 32% discount rather than taken *on top* of that discount is immaterial.

IDOR's efforts to explain away the evidence that the Dealers retained the Sales Tax burden only confirm that its myopic focus on one immaterial aspect of the contracting parties' dealings is misguided. In particular, IDOR's attempt to recast the Finance Companies' payment of the Sales Tax Receivable to the Dealers as a "bonus payment" simply cannot be squared with the express terms of the Master Dealer Agreement, the Dealers' accounting treatment of the Sales Tax Receivable, or the payment of the Receivable upon full repayment of the associated loan. There is no evidence whatsoever, and no other reason to maintain, that the Dealers and the Financing Companies were actually employing, without saying so, some kind of "bonus" system that would prevent the Dealers from claiming tax credit memoranda under Illinois law, in a manner contrary to all of the contract terms, accounting entries, and payment activity.

On this record, the bankruptcy court's finding that the Dealers in fact bore the burden of Sales Tax for loans sold to the Financing Companies is not clearly erroneous.

III. IDOR's Failure to Seek Discovery Regarding the Retained Loans Is Not a Basis for Disturbing the Bankruptcy Court's Judgment.

IDOR also contends that a "fact dispute" should have precluded Judgment for the Debtors on the $1,063,328 in requested tax credit memoranda for loans retained by the Dealers. In particular, IDOR objects that it needed discovery to verify the proper amount of those memoranda. The bankruptcy court correctly rejected that argument (ROA 11-7, at 13–16)—which IDOR belatedly raised for the first time in its Rule 59 Motion (ROA 11-5, at 275–78).

IDOR has never—at any stage in these proceedings—identified a shred of evidence showing a factual dispute regarding the value of the requested tax credit memoranda on defaulted loans retained by the Dealers. Once the Debtors submitted their showing on the proper value of those tax credit memoranda, IDOR had an obligation to come forward with evidence disputing that showing. ROA 11-7, at 14–15 (citing Fed. R. Bankr. P. 7034; *In re Ballard*, 502 B.R. 311, 321 (Bankr. S.D. Ohio 2013)). It did not do so. Nor did it do so after the Debtors supplied additional documentation while its Rule 59 Motion was pending. ROA 11-6, at 142 – ROA 11-7, at 8. And even now, on appeal, IDOR *still* does not identify any evidence contradicting the Debtors' submission.[15] That alone proves the utter lack of merit to IDOR's assertions about purportedly material factual disputes.

[15] Nor can IDOR try to remedy this defect in its reply brief. *See Hentosh v. Herman M. Finch Univ. of Health Scis./The Chi. Med. Sch.*, 167 F.3d 1170, 1173 (7th Cir.

Because IDOR never actually identified any evidence creating a factual dispute, its objection was "really" a request that the "court … vacate its order so that [IDOR] can conduct discovery that it should have taken before it responded to the tax motion." ROA 11-7, at 14. The bankruptcy court correctly held that "[t]his is not a valid ground for relief under Rule 59." *Id.*

"A party may not use a motion for reconsideration to introduce new evidence that could have been presented earlier." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (court did not abuse its discretion in denying motion for "reconsideration to introduce new evidence that could have been presented earlier"). "To support a motion for reconsideration based on newly discovered evidence, the moving party must show not only that this evidence was newly discovered or unknown to it until after the hearing, but also that it could not with reasonable diligence have discovered and produced such evidence [during the pendency of the motion]." *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1269 (7th Cir. 1996) (alteration in original) (quotation marks omitted).

Here, IDOR has presented absolutely no reason why it could not with reasonable diligence have obtained the evidence it now seeks prior to entry of judgment on the Tax Credits Motion. As the bankruptcy court explained:

1999) (appellant "waived her right to challenge the district court's conclusion on [an] issue" not "address[ed] … in her opening brief").

> If IDOR needed discovery to determine whether it would object to the debtors' requests for credit memos for loans the retailers retained, the burden was on IDOR to request that discovery and seek an extension of time to respond to the tax motion … . If IDOR needed documents to ascertain whether the debtors' allegations regarding the retained loans were true, they could have and should have served document requests under … Fed. R. Bankr. P. Rule 7034. … Here, IDOR never served discovery requests and never asked for more time to respond to the tax motion so that it could take whatever discovery it believed was necessary to fully respond to the debtors' motion.

ROA 11-7, at 14–15. Indeed, IDOR's motion for reconsideration is even *more* defective than those rejected in *Oto* and *Caisse* because IDOR has not identified "new evidence" at all—rather, it seeks to re-open discovery in order to *explore* the possibility that new evidence might bear on the court's judgment.

But the "decision not to reopen discovery" is reviewed for "abuse of discretion." *Winters*, 498 F.3d at 743. Courts routinely deny such requests when made at "late stage[s]" of a case—in particular, after the court has issued a judgment. *See, e.g.*, *APC Filtration, Inc. v. Becker*, 2009 WL 187912, at *2 (N.D. Ill. Jan. 26, 2009); *Ty, Inc. v. Publ'ns Int'l, Ltd.*, 2003 WL 21294667, at *6 (N.D. Ill. June 4, 2003). And a court does not abuse its discretion in denying a Rule 59 motion made on that basis. *See Rodriguez v. Kane Cty. Sheriff's Merit Comm'n*, 505 F. App'x 580, 584 (7th Cir. 2013) ("district court appropriately rejected" a request to reopen made in a Rule 59 motion because, "if [the appellant] wanted additional information to use in her case, she needed to ask for it during discovery").

That IDOR had requested documents during an audit is irrelevant. Any references to those requests in IDOR's briefing likewise "accomplished nothing." ROA 11-7, at 16. Like any other litigant, IDOR was bound by the Federal Rules of Bankruptcy Procedure. The bankruptcy court "did not abuse its discretion" in holding IDOR to those rules because "Rule 59(e) is not a vehicle for a litigant to undo her own procedural failures." *Sherrill v. Potter*, 329 F. App'x 672, 676 (7th Cir. 2009) (no abuse of discretion in court's denial of Rule 59(e) motion to belatedly supplement the record to contradict opposing party's statement); *Bordelon v. Chi. Sch. Reform Bd. of Trustees*, 233 F.3d 524, 529 (7th Cir. 2000) (upholding denial of Rule 59(e) motion based on failure to follow procedural rules).

Finally, the bankruptcy court properly rejected IDOR's fact-dispute objection and denied its Rule 59 Motion because any "new evidence would not have changed" the outcome in this case. *Hecker*, 556 F.3d at 591; *Sherrill*, 329 F. App'x at 676. As the bankruptcy court found—and as was manifestly correct for all the reasons discussed here—the Debtors were entitled to the requested tax credit memoranda irrespective of whether the underlying contracts were retained or assigned to the Financing Companies. Thus, any evidence IDOR might elicit regarding the retained contracts could make no difference to the Judgment.

For each of these reasons, the bankruptcy court did not abuse its discretion in denying IDOR's Rule 59 request to vacate the order requiring IDOR to issue tax credit memoranda related to loans retained by the Dealers.

CONCLUSION

The judgment of the bankruptcy court should be AFFIRMED in full.

Dated: February 7, 2020

Respectfully submitted,

/s/ Joshua D. Yount

Bojan Guzina
Jackson T. Garvey
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000
bguzina@sidley.com
jgarvey@sidley.com

Joshua D. Yount
Craig E. Reimer
Samantha C. Booth
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600
jdyount@mayerbrown.com
creimer@mayerbrown.com
sbooth@mayerbrown.com

Amy F. Nogid (*pro hac vice* pending)
MAYER BROWN LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 506-2500
anogid@mayerbrown.com

Counsel for the Reorganized Debtors-Appellees

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. Bankr. P. 8015(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. Bankr. P. 8015(g), this brief contains 11,315 words.

2. This document complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed. R. Bankr. P. 8015(a)(6) because this document has been prepared using Microsoft Word 14-point Times New Roman font.

/s/ Joshua D. Yount

CERTIFICATE OF SERVICE

I, Joshua D. Yount, hereby certify that on February 7, 2020, I electronically filed the foregoing **Brief of Reorganized Debtors-Appellees** and accompanying **Addendum** via the Court's CM/ECF system, which will deliver electronic notice of the filing to all counsel of record.

/s/ Joshua D. Yount

ADDENDUM

TABLE OF CONTENTS

Page

EXCERPTS OF PERTINENT STATUTES AND RULES

28 U.S.C. § 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c) (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction –

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

11 U.S.C. § 505. Determination of tax liability

(a)(1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

(2) The court may not so determine –

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title;

(B) any right of the estate to a tax refund, before the earlier of –

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

(ii) a determination by such governmental unit of such request; or

(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has expired.

(b)(1)(A) The clerk shall maintain a list under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may –

(i) designate an address for service of requests under this subsection; and

(ii) describe where further information concerning additional requirements for filing such requests may be found.

(B) If such governmental unit does not designate an address and provide such address to the clerk under subparagraph (A), any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.

(2) A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax at the address and in the manner designated in paragraph (1). Unless such return is fraudulent, or contains a material misrepresentation, the estate, the trustee, the debtor, and any successor to the debtor are discharged from any liability for such tax –

(A) upon payment of the tax shown on such return, if –

(i) such governmental unit does not notify the trustee, within 60 days after such request, that such return has been selected for examination; or

(ii) such governmental unit does not complete such an examination and notify the trustee of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;

(B) upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or

(C) upon payment of the tax determined by such governmental unit to be due.

(c) Notwithstanding section 362 of this title, after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.

35 ILCS 120/6. Credit memorandum or refund

§ 6. Credit memorandum or refund. If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund 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, as such. For purposes of this Section, the tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the selling price of that vehicle as provided in the New Vehicle Buyer Protection Act. When a motor vehicle is returned for a refund of the purchase price under the New Vehicle Buyer Protection Act, the Department shall issue a credit memorandum or a refund for the amount of tax paid by the retailer under this Act attributable to the initial sale of that vehicle. Claims submitted by the retailer are subject to the same restrictions and procedures provided for in this Act. If it is determined that the Department should issue a credit memorandum or refund, the Department may first apply the amount thereof against any tax or penalty or interest due or to become due under this Act or under 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, from the person who made the erroneous payment. If no tax or penalty or interest is due and no proceeding is pending to determine whether such person is indebted to the Department for tax or penalty or interest, the credit memorandum or refund shall be issued to the claimant; or (in the case of a credit memorandum) the credit memorandum may be assigned and set over by the lawful holder thereof, subject to reasonable rules of the Department, to any other person who is subject to this 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, and the amount thereof applied by the Department against any tax or penalty or interest due or to become due under this Act or under 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, from such assignee. However, as to any claim for credit or refund filed with the Department on and after each January 1 and July 1 no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under this Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded, except that if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability as provided in Section 4 of this Act, such claim may be filed at any time prior to the expiration of the period agreed upon.

No claim may be allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit or refund to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment or order of court. No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears (a) that the claimant bore the burden of such amount and has not been relieved thereof nor reimbursed therefor and has not shifted such burden directly or indirectly through inclusion of such amount in the price of the tangible personal property sold by him or her or in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he or she or his or her legal representative may be relieved of the burden of such amount, be reimbursed therefor or may shift the burden thereof; or (b) that he or she or his or her legal representative has repaid unconditionally such amount to his or her vendee (1) who bore the burden thereof and has not shifted such burden directly or indirectly, in any manner whatsoever; (2) who, if he or she has shifted such burden, has repaid unconditionally such amount to his own vendee; and (3) who is not entitled to receive any reimbursement therefor from any other source than from his or her vendor, nor to be relieved of such burden in any manner whatsoever. No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser and retained by the claimant with respect to the same transaction under the Use Tax Act.

Any credit or refund that is allowed under this Section shall bear interest at the rate and in the manner specified in the Uniform Penalty and Interest Act.

In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from the Aviation Fuel Sales Tax Refund Fund or from such appropriation as may be available for that purpose, as appropriate. If it appears unlikely that the amount available would permit everyone having a claim

allowed during the period covered by such appropriation or from the Aviation Fuel Sales Tax Refund Fund, as appropriate, to elect to receive a cash refund, the Department, by rule or regulation, shall provide for the payment of refunds in hardship cases and shall define what types of cases qualify as hardship cases.

If a retailer who has failed to pay retailers' occupation tax on gross receipts from retail sales is required by the Department to pay such tax, such retailer, without filing any formal claim with the Department, shall be allowed to take credit against such retailers' occupation tax liability to the extent, if any, to which such retailer has paid an amount equivalent to retailers' occupation tax or has paid use tax in error to his or her vendor or vendors of the same tangible personal property which such retailer bought for resale and did not first use before selling it, and no penalty or interest shall be charged to such retailer on the amount of such credit. However, when such credit is allowed to the retailer by the Department, the vendor is precluded from refunding any of that tax to the retailer and filing a claim for credit or refund with respect thereto with the Department. The provisions of this amendatory Act shall be applied retroactively, regardless of the date of the transaction.

Ill. Admin. Code tit. 86, § 130.1960 (effective Dec. 1, 2000 – Jan. 26, 2018) Finance Companies and Other Lending Agencies – Installment Contracts – Bad Debts

* * *

(d) Bad Debts

(1) In case a retailer repossesses any tangible personal property and subsequently resells such property to a purchaser for use or consumption, his gross receipts from such sale of the repossessed tangible personal property are subject to Retailers' Occupation Tax. He is entitled to a bad debt credit with respect to the original sale in which the default has occurred to the extent to which he has paid Retailers' Occupation Tax on a portion of the price which he does not collect, or which he is not permitted to retain because of being required to make a repayment thereof to a lending agency under a "with recourse" agreement. Retailers of tangible personal property other than motor vehicles, watercraft, trailers and aircraft that must be registered with an agency of this State may obtain this bad debt credit by taking a deduction on the returns they file with the Department for the month in which the federal

income tax return or amended return on which the receivable is written off is filed, or by filing a claim for credit or provided in subsection (d)(3) of this Section. Because retailers of motor vehicles, watercraft, trailers and aircraft do not pay Retailers' Occupation Tax to the Department on retail sales of motor vehicles, watercraft, trailers, and aircraft with monthly returns, but remit the tax to the Department on a transaction by transaction basis, they are unable to take a deduction on the returns that they file with the Department, but may file a claim for credit with the Department, as provided in subsection (d)(3), on any transaction with respect to which they desire to receive the benefit of the repossession credit.

(2) Retailers who incur bad debt on any tangible personal property that is not repossessed may also obtain bad debt credit as provided in subsections (d)(1) and (3).

(3) In the case of tax paid on an account receivable that becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the Retailers' Occupation Tax Act, on the date that the Federal income tax return or amended return on which the receivable is written off is filed.

Ill. Admin. Code tit. 86, § 130.1960 (effective Jan. 26, 2018) Finance Companies and Other Lending Agencies – Installment Contracts – Bad Debts

* * *

(d) Bad Debts

(1) Definitions. On and after July 31, 2015, for purposes of this subsection (d):

(A) "*Retailer" means a person who holds himself or herself out as being engaged (or who habitually engages) in selling tangible personal property at retail with respect to such sales and includes a retailer's affiliates.*

(B) "*Lender" means a person, or an affiliate, assignee, or transferee of that person, who owns or has owned a private-label credit card account or an interest in a private-label credit card receivable that the person purchased directly from a retailer who remitted the tax imposed under the Retailers' Occupation Tax Act; originated pursuant to that person's contract with the*

retailer who remitted the tax imposed under the Retailers' Occupation Tax Act; or acquired from a third party.

(C) "*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.*

(D) "*Affiliate" means an entity affiliated under section 1504 of the Internal Revenue Code, or an entity that would be an affiliate under that section had the entity been a corporation.* [35 ILCS 120/6d]

(2) Bad Debt Claimed by Retailers Through July 30, 2015

(A) In case a retailer repossesses any tangible personal property and subsequently resells that property to a purchaser for use or consumption, his or her gross receipts from that sale are subject to ROT. The retailer is entitled to a bad debt credit with respect to the original sale in which the default has occurred to the extent to which he or she has paid ROT on a portion of the price that he or she does not collect, or that he or she is not permitted to retain because of being required to make a repayment of that portion to a lending agency under a "with recourse" agreement.

(B) Retailers of tangible personal property other than motor vehicles, watercraft, trailers and aircraft that must be registered with an agency of this State may obtain this bad debt credit by taking a deduction on the returns they file with the Department for the month in which the federal income tax return or amended federal income tax return on which the receivable is written off is filed, or by filing a claim for credit as provided in subsection (d)(2)(D). Because retailers of motor vehicles, watercraft, trailers and aircraft do not pay ROT to the Department on retail sales of motor vehicles, watercraft, trailers and aircraft with monthly returns, but remit the tax to the Department on a transaction by transaction basis, they are unable to take a deduction on the returns that they file with the Department, but may file a claim for credit with the Department, as provided in subsection (d)(2)(D), on any transaction with respect to which they desire to receive the benefit of the repossession credit.

(C) Retailers who incur bad debt on any tangible personal property that is not repossessed may also obtain bad debt credit as provided in subsections (d)(2)(A) and (D).

(D) In the case of tax paid on an account receivable that becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the Retailers' Occupation Tax Act, on the date that the federal income tax return or amended return on which the receivable is written off is filed.

(3) Bad Debt Claimed by Retailers on and after July 31, 2015

(A) On and after July 31, 2015, 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 by the retailer. If these accounts are thereafter, in whole or in part, collected by the retailer, the amount collected shall be included in the first return filed after the collection, and the tax shall be paid with the return.* [35 ILCS 120/6d(a)] For purposes of computing the deduction or refund, payments on the accounts or receivables shall be prorated against the amounts outstanding on the accounts or receivables (e.g., any penalties, interest and fees).

(B) Because retailers of motor vehicles, watercraft, trailers and aircraft do not pay ROT to the Department on retail sales of motor vehicles, watercraft, trailers and aircraft with monthly returns, but remit the tax to the Department on a transaction-by-transaction basis, they are unable to take a deduction on the returns that they file with the Department, but may file a claim for credit with the Department, as provided in subsection (d)(5)(B), on any eligible transaction.

(4) Private-label Credit Cards -- Bad Debt on and after July 31, 2015

(A) On and after July 31, 2015, *with respect to the payment of taxes on purchases made through a private-label credit card, if consumer accounts or receivables are found to be worthless or uncollectible, the retailer may claim a deduction on a return in an amount equal to, or may obtain a refund of, the tax remitted by the retailer on the unpaid balance due if:*

(i) *the accounts or receivables have been charged off as bad debt on the lender's books and records on or after January 1, 2016;*

(ii) *the accounts or receivables have been claimed as a deduction pursuant to section 166 of the Internal Revenue Code on the federal income tax return filed by the lender; and*

(iii) *a deduction was not previously claimed and a refund was not previously allowed on that portion of the account receivable.*

(B) The deduction or refund allowed under subsection (d)(4)(A):

(i) *does not apply to credit sale transaction amounts resulting from purchases of titled property;*

(ii) *includes only those credit sale transaction amounts that represent purchases from the retailer whose name or logo appears on the private-label credit card used to make those purchases;*

(iii) *may only be taken by the taxpayer, or its successors, that filed the return and remitted tax on the original sale on which the deduction or refund claim is based; and*

(iv) *includes all credit sale transaction amounts eligible under* subsection (d)(4)(B)(ii) *that are outstanding with respect to the specific private-label credit card account or receivable at the time the account or receivable is charged off, regardless of the date the credit sale transaction actually occurred.*

(5) Bad Debt Procedural Requirements -- Record Keeping – Limitations Period on and after July 31, 2015

(A) *The retailer and lender shall maintain adequate books, records or other documentation supporting the charge off of the accounts or receivables for which a deduction was taken or a refund was claimed under Sections 6 or 6d of the Retailers' Occupation Tax Act,* including, but not limited to, a copy of the federal return on which the deduction was claimed. *For purposes of computing the deduction or refund, payments on the accounts or receivables shall be prorated against the amounts outstanding on the accounts or receivables.*

(B) If a retailer or lender does not charge off an account receivable that is found to be worthless or uncollectible as a bad debt in its books and records and claim a deduction pursuant to section 166 of the Internal Revenue Code on its federal income tax return or amended return, the tax paid on that bad debt or receivable will not be considered a tax paid in error and, thus, the retailer will not be able to file a deduction or claim for credit in accordance with Sections 6 or 6d of the Retailers' Occupation Tax Act. Retailers or lenders that file federal returns on a cash basis and cannot claim a deduction pursuant to section 166 of the Internal Revenue Code are not eligible for the bad debt deduction.

(C) *For purposes of the deduction or refund allowable under Section 6d of the Retailers' Occupation Tax Act, the limitations period for claiming the deduction or refund shall be the same as the limitations period set forth in Section 6 of the Retailers' Occupation Tax Act for filing a claim for credit, and shall commence on the date that the accounts or receivables have been claimed as a bad debt deduction pursuant to section 166 of the Internal Revenue Code on the federal income tax return filed by the lender, regardless of the date on which the sale of the tangible personal property actually occurred.*

(D) *Section 6d of the Act is statutorily exempt from the sunset provisions of Section 2-70 of the Act.* [35 ILCS 120/6d]