2019 IL App (1st) 172472-U

No. 1-17-2472

Order filed June 14, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PREMIER AUTO FINANCE, INC.,	)	Petition for Administrative
	)	Review of the Illinois
Petitioner-Appellant,	)	Independent Tax Tribunal.
	)	
v.	)	No. 15 TT 175
	)	
THE ILLINOIS INDEPENDENT TAX TRIBUNAL and	)	Honorable
THE ILLINOIS DEPARTMENT OF REVENUE,	)	James M. Conway,
	)	Administrative Law Judge,
Respondents-Appellees.	)	presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justice Hoffman concurred in the judgment.
Presiding Justice Rochford specially concurred.

O R D E R

¶ 1 *HELD*: The decision of the Illinois Department of Revenue denying the attempted reclassification for income tax status of an entity as a "general corporation" was properly affirmed by the Illinois Independent Tax Tribunal where the entity was properly considered a "financial organization" because it satisfied the definition of a "sales finance company" under section 1501(a)(8)(C)(i) of the Illinois Income Tax Act (West 2012).

¶ 2 On direct administrative review,[1] we consider a decision by the Illinois Independent Tax Tribunal (Tax Tribunal) denying plaintiff Premier Auto Finance, Inc.'s, motion for summary judgment and granting summary judgment in favor of defendant, the Illinois Department of Revenue (Department). In so doing, the Tax Tribunal affirmed the Department's decision denying plaintiff's reclassification of its income tax status from a "financial organization" to a general corporation under the Illinois Income Tax Act (Act) (35 ILCS 5/101 *et seq.* (West 2012)). On appeal, plaintiff contends the Tax Tribunal erred in its decision where plaintiff does not satisfy the definition of a "financial organization" because it is not a "sales finance company" as defined by the Act. Based on the following, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff was a wholly-owned subsidiary of Aon Corporation (Aon) during the taxable years in question, namely, 2006, 2007, and 2008. Plaintiff is a holding company and the parent company of several corporations known as the Cananwill entities (Cananwill Inc. (PA), Cananwill Inc. (CA), and Cananwill Corporation (DE)). The Cananwill entities are premium finance companies that make short-term loans (typically 12 months or less) to businesses in order to enable those businesses to finance purchases of commercial property and casualty insurance. Generally, business insurance requires one, large lump-sum premium payment. The Cananwill entities' loans allow their clients to purchase insurance policy premiums via installment payments. The Cananwill entities charge financing fees on their loans.

[1] This court has jurisdiction pursuant to 3-113 of the Administrative Review Law (735 ILCS 5/3-113(a) (West 2014)) and section 1-75 of the Illinois Independent Tax Tribunal Act (35 ILCS 1010/1-75(a) (West 2014).

¶ 5 At the relevant time, the Act required Aon to file separate corporate income tax returns for its subsidiaries based on specified income apportionment formulas: (1) general corporations; (2) insurance companies; and (3) financial organizations. See 35 ILCS 5/304 (West 2012). Initially, Aon determined that plaintiff, on behalf of the Cananwill entities, was required to file its 2006, 2007, and 2008 state income tax returns as a "financial organization" pursuant to section 304(c) of the Act (35 ILCS 5/304(c) (West 2012)). Later, after having filed the relevant tax returns, plaintiff concluded that the Cananwill entities did not meet the criteria for "financial organizations" because they did not qualify as "sales finance companies," which are types of financial organizations, under section 1501(a)(8)(C)(i) of the Act (35 ILCS 5/1501(a)(8)(C)(i) (West 2012)) where they did not provide services and did not conduct transactions involving tangible personal property. As a result, in November 2012, plaintiff filed amended tax returns removing the Cananwill entities from the combined financial organizations tax return and instead including the entities on the combined tax return for general corporations. The effect of amending the tax returns produced a refund for Aon in the amount of $1,681,019.

¶ 6 Following an audit, on June 22, 2015, the Department issued a "Notice of Claim Denial" in which it denied plaintiff's attempted reclassification and Aon's refund. The Department concluded that the Cananwill entities' business and plaintiff's tax filing on their behalf were properly classified as "financial organizations." In August 2015, plaintiff filed a petition before the Tax Tribunal contesting the Department's decision. Plaintiff and the Department then filed cross-motions for summary judgment.

¶ 7 On September 7, 2017, the Tax Tribunal issued a final decision granting summary judgment in favor of the Department and against plaintiff. The Tax Tribunal found the

Department correctly denied plaintiff's attempted tax reclassification where it concluded that plaintiff qualified as a "financial organization" under section 1501(a)(8)(C)(i) of the Act because it was a "sales finance company." The Tax Tribunal reasoned that plaintiff funded the purchase of insurance to its clients wherein insurers provide a service to those clients, the insureds.

¶ 8 This timely appeal followed.

¶ 9 II. ANALYSIS

¶ 10 The question before us is whether, under the Act, the purchase of insurance in this case can be categorized as the purchase of tangible personal property or the purchase of a service, such that the Cananwill entities qualified as "sales finance companies" pursuant to section 1501(a)(8)(C)(i) (West 2012) of the Act and thus were responsible for the associated income tax burdens of "financial organizations."

¶ 11 Summary judgment is proper where "the pleadings, depositions and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014). When both parties file cross-motions for summary judgment, as they did here, they agree that no material facts are in dispute and invite a decision as a matter of law. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. We review a decision granting summary judgment *de novo*. *Id.* ¶ 30. Moreover, because this case involves the statutory interpretation of the Act, we review those questions of law *de novo*. *Id*.

¶ 12 "Tax laws must be strictly construed; they must be given a reasonable construction, without bias or prejudice against either the State or the taxpayer, in order to effectuate the intent of the legis*lature. [Citatio*ns.] Where there is doubt, tax statutes will be construed most strongly

against the government and in favor of the taxpayer. [Citation.]" *Id.* Doubt arises when a statute is ambiguous, which occurs if i*ts lang*ua*ge* is susceptible to more than one equally reasonable interpretation. *In re County Treasurer & Ex Officio County Collector,* 2017 IL App (4th) 170003, ¶ 44.

¶ 13 During the relevant taxing years, *i.e.*, 2006-2008, the Act required that business income be allocated and apportioned for purposes of income tax filings, such that entities filed combined group tax returns only with those businesses falling within the same category. See 35 ILCS 5/304 (West 2012). One such category was "financial organizations." 35 ILCS 5/304(c) (West 2012). For purposes of the Act, a financial organization was defined as:

> "any bank, bank holding company, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, building and loan association, credit union, currency exchange, cooperative bank, small loan company, *sales finance company*, investment company, or any person who is owned by a bank or bank holding company." (Emphasis added.) 35 ILCS 5/1501(a)(8)(A) (West 2012).

The Act further defined the term "sales finance company," in relevant part, as:

> "A person primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business of making loans upon the security of customer receivables, *the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower*, or the business of finance leasing." (Emphasis added.) 35 ILCS 5/1501(a)(8)(C)(i) (West 2012).

¶ 14 Because the Cananwill entities made loans to its clients in order to satisfy commercial property and casualty insurance premium obligations (*i.e.*, made loans for the express purpose of funding purchases of insurance by its clients), the parties agree that this case centers on the definition of "insurance." The parties further agree that "insurance" is not defined in section 1501 of the Act.

¶ 15 Plaintiff generally contends that "insurance" is a contract that equates to intangible property; therefore, according to plaintiff, the Cananwill entities did not meet the definition of "sales finance companies" and could not qualify as "financial organizations" during the relevant taxing period. In contrast, the Department generally contends that plaintiff, on behalf of the Cananwill entities, is a "sales finance company" because the Cananwill entities' clients purchased "services" in the form of insurance; therefore, plaintiff was classified properly as a "financial organization."

¶ 16 In denying summary judgment against plaintiff, the Tax Tribunal rejected plaintiff's argument that its business of providing insurance premium financing did not fall within the challenged statute because insurance contracts are intangible property. The Tax Tribunal focused on the statutory language such that what was purchased by the borrower was the critical determination, *i.e.*, if the borrower purchased tangible personal property or a service then the lender could be a sales finance company. According to the Tax Tribunal, the categorization of the underlying contract had no bearing on the application of the statute; rather, only the item being purchased mattered for purposes of section 1501(a)(8)(C)(i) of the Act. Tax Tribunal concluded, based on long-established case law interpreting the Consumer Fraud and Deceptive Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2012)), that the sale of

insurance is the sale of a service. The Tax Tribunal additionally suggested that the purchase of a service can be considered an intangible because the terms are not mutually exclusive but, rather, intangible services could be a subset of "intangibles."

¶ 17 Plaintiff spends much time in its brief disputing the Tax Tribunal's "creation" of a "dual-identity concept" whereby insurance can be categorized as an "intangible service." Plaintiff insists that insurance must be either a service or an intangible property; it cannot be both. According to plaintiff, including "intangible services" within the definition of sales finance companies would encompass any company that makes a loan. Instead, the legislature used the qualifying language "the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower;" therefore, plaintiff asserts the plain language demonstrates that not all loans fall within the requisite definition. 35 ILCS 5/1501(a)(8)(C)(i) (West 2012).

¶ 18 Relying on the Illinois Insurance Code (215 ILCS 5/1 *et seq.* (West 2012)), plaintiff further argues that the key activity defining insurance is the making of the contract, which is considered intangible personal property. Plaintiff highlights that the concept of "insurance services" does not appear in the Insurance Code. Instead, plaintiff suggests that service requires "active exertion of effort by a person," such as in the case of a painter or a landscaper. Plaintiff argues that it did not provide loans to facilitate the purchase of a service; it provided loans to facilitate the purchase of insurance policies, which plaintiff insists are intangible personal property. Plaintiff claims support in the Department's prior general information letter wherein it stated that insurance is considered intangible property although plaintiff acknowledges that a general information letter is nonbinding. Plaintiff argues, however, that the letter is instructive

and cannot be denied. Moreover, plaintiff posits that insurance contracts are considered intangible personal property for federal income tax purposes. Finally, plaintiff dismisses the Department's reliance on case law interpreting insurance in the context of the "Consumer Fraud Act" (Consumer Fraud and Deceptive Practices Act (815 ILCS 505/1 *et seq.* (West 2012))), arguing that the Consumer Fraud Act is not comparable to the Act.

¶ 19 The Department's responsive argument that insurance is a service is based primarily on a line of cases interpreting the Consumer Fraud Act. The Department additionally points out that other courts and jurisdictions consider insurance to be a service. The Department discounts plaintiff's insistence that those cases are distinguishable because they are not insurance cases *per se*. Instead, the Department argues that the same term used in separate statutes should be given the same meaning. The Department posits that insurance is not intangible property, highlighting that the Insurance Code (215 ILCS 5/1 *et seq.* (West 2012)) does not include the term "intangible property" in the statute. Additionally, the Department points to the language of section 1501(a)(8)(C)(i) to demonstrate that intangible property is not listed in the definition of a sales finance company. Moreover, intangible property is not found within the common-law definition of insurance. In response to plaintiff's emphasis on the contractual elements of insurance, the Department argues that converting all service contracts into intangible property would render the term "service" in section 1501(a)(8)(C)(i) meaningless. Finally, the Department denies the applicability of its previous general information letter, which lacked precedential value and applied only to the specific parties subjected to that letter.

¶ 20 We first address plaintiff's argument that the Tax Tribunal improperly created the concept of "intangible service." We note that, in its sixteen page order denying plaintiff's motion

for summary judgment, the Tax Tribunal in one paragraph mentioned that a service could be considered intangible and fall within section 1501(a)(8)(C)(i) in response to plaintiff's argument that the categorization of the underlying contract controlled the applicability of the statute. The Tax Tribunal's discussion was limited to that single paragraph and did not constitute its reasoning for concluding that insurance is a service for purposes of the Act. We do not find that the Tax Tribunal's narrow use of "intangible service" to be controlling in this matter. Instead, we find the Tax Tribunal was attempting to demonstrate that not all services involve something tangible. The Tax Tribunal was not, as plaintiff posits, suggesting that all loans are intangible services.

¶ 21 Turning to the substance of this appeal, we reiterate that this case centers on whether commercial property and casualty insurance is deemed a service,[2] which is determinative of whether plaintiff fell within the definition of a sales finance company for the taxable years of 2006-2008, thus rendering it a financial organization for income tax allocation purposes. The question is not whether plaintiff's business of providing loans to purchase insurance was a service, but whether the purchase of the commercial property and casualty insurance itself constituted the purchase of a service. Again, the disputed language is whether plaintiff was in "the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower." 35 ILCS 5/1501(a)(8)(C)(i) (West 2012). With the matter properly framed, we find the language of the statute is not ambiguous. We, therefore, interpret the statute according to its terms without resorting to aids of construction and need not look to the statute's legislative history to ascertain the legislature's intent. *Branson v. Department of*

[2] The parties agree that insurance is not tangible personal property under section 1501(a)(8)(C)(i) of the Act. See 35 ILCS 5/1501(a)(8)(C)(i) (West 2012).

Revenue, 168 Ill. 2d 247, 254 (1995); see *Kunkel v. Walton,* 179 Ill. 2d 519, 536 (1997) (when statutory language is unambiguous, "we have no occasion to consider its legislative history"). As we will discuss further, under the facts of this case, wherein plaintiff's clients used plaintiff's loans to fund the purchases of commercial property and casualty insurance, we conclude that plaintiff was in the business of making loans for the express purpose of funding purchases for services by its clients. We, therefore, find that plaintiff was classified properly as a sales finance company and its income tax status was that of a financial organization.

¶ 22 We acknowledge that the legislature demonstrated its intent to treat separately tangible personal property, services, and intangible personal property under the Act. Section 304 of the Act explains the difference in treatment between the sale of tangible personal property, services, and intangible personal property for purposes of reporting business income. See generally 35 ILCS 5/304 (West 2012). According to the Act, tangible personal property sales are taxed based on where the property was delivered or shipped. 35 ILCS 5/304(a)(3)(B) (West 2012). Services are taxed if the services were received in Illinois. 35 ILCS 5/304(a)(3)(C-5)(iv) (West 2012). Intangible personal property, such as patents, copyrights, and trademarks, are taxed based on the extent to which the items were utilized in Illinois (35 ILCS 5/304(a)(3)(B-1) (West 2012)), and interest, net gains, and other items from intangible personal property are taxed based on whether the taxpayer received incomes or gains from a customer in Illinois or if the taxpayer performed income-producing activities in Illinois (35 ILCS 5/304(a)(3)(C-5)(iii) (West 2012). Nevertheless, contrary to plaintiff's insinuation, the legislature's demonstrated intent to treat the business income of each category differently does not demonstrate an additional intent to categorize insurance in any manner whatsoever.

¶ 23 Although "insurance" is not defined in the Act, the term has a common-law definition. In *Griffin Systems, Inc. v. Washburn*, 153 Ill. App. 3d 113 (1987), this court articulated the following four-pronged definition of insurance:

> "(1) a contract or agreement between an insurer and an insured which exists for a specific period of time; (2) an insurable interest (usually property) possessed by the insured; (3) consideration in the form of a premium paid by the insured to the insurer; and (4) the assumption of risk by the insurer whereby the insurer agrees to indemnify the insured for potential pecuniary loss to the insured's property resulting from certain specified perils." *Id.* at 116.

¶ 24 The common-law definition of insurance contains neither of the disputed terms, namely, intangible property or service. The definition does contain the word "contract," but, contrary to plaintiff's argument, the contract itself does not encapsulate the entire definition. The Act instructs that, "[e]xcept as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the Internal Revenue Code *** or laws related to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes." 35 ILCS 5/102 (West 2014). Moreover, and to the extent the terms do not appear in comparable texts, our supreme court has instructed that "[w]here a term is undefined, we presume that the legislature intended the term to have its popularly understood meaning." *Metropolitan Life Insurance v. Hamer,* 2013 IL 114234, ¶ 20. The supreme court additionally explained that "[i]t is appropriate to employ a dictionary to ascertain the meaning of an otherwise undefined word or phrase." *Id.*

¶ 25 Section 367 of the Internal Revenue Code (26 USCA § 367 (2012)) defines "intangible property," in relevant part, as patent, copyright, trademark, "franchise, license, or contract," method, goodwill, and "other item of value or potential value of which is *not attributable to tangible property or the services of any individual*." (Emphasis added.) 26 USCA § 367(d)(4) (2012). A contract, as defined in the Internal Revenue Code, is considered intangible personal property. We, however, dismiss plaintiff's argument that the existence of the underlying contract defines the categorization of insurance pursuant to section 1501(a)(8)(C)(i). In fact, interpreting the disputed language as suggested by plaintiff would render the term "service" meaningless, in violation of the rules of statutory construction. See *In re Marriage of Kates,* 198 Ill. 2d 156, 163 (2001) ("[s]tatutes should be read as a whole with all relevant parts considered, and they should be construed, if possible, so that no term is rendered superfluous or meaningless"). More specifically, if all contracts for service were intangible personal property then section 1501(a)(8)(C)(i) of the Act need only define a sales financial company as a company in "the business of making loans for the express purpose of funding purchases of tangible personal property *** by the borrower." 35 ILCS 5/1501(a)(8)(C)(i) (West 2012). As a primary tenet of statutory construction, we will not rewrite the language of the statute as written. See *In re Application of County Collector,* 356 Ill. App. 3d 668, 670 (2005) (the court must "construe the statute as written and may not, under the guise of construction, supply omissions, remedy defects, annex new provision, add exceptions, limitations or conditions, or otherwise change the law so as to depart from the plain meaning of the language employed in the statute"). Section 367 of the Internal Revenue Code does not reference any services underlying the contract that effectively would be transformed into intangible personal property, nor does the statute make any

reference to insurance. We, therefore, are not convinced that the existence of the insurance contract necessarily means that insurance equates to intangible personal property.

¶ 26 We find it notable that the term "intangible property" does not appear in the Insurance Code; however, the term "insurance services" does. See 215 ILCS 5/500-77(c) (West 2012) (explaining policyholder information and ownership of "expiration" information and stating that "for purposes of soliciting, selling, or negotiating the renewal or sale of insurance coverage, insurance products, or *insurance services* ***, a business entity shall own or have exclusive use of expirations, records, and other written or electronically stored information directly related to an insurance application submitted by, or an insurance policy written through, the business entity"). Accordingly, the Illinois legislature has recognized that insurance is not merely defined by the underlying contract for coverage, products, or services.

¶ 27 In addition, the characteristics of commercial property and casualty insurance, which is the form of insurance at issue in this case, are not like forms of intangible personal property like a stock, bond, trademark, or copyright. Commercial property and casualty insurance is not a placeholder demonstrating ownership and redemption rights; rather, insurance is a promise to indemnify the insured from covered incidents. It is an "assumption of risk by the insurer whereby the insurer agrees to indemnify the insured for potential pecuniary loss to the insured's property resulting from certain specified perils." *Griffin Systems, Inc.*, 153 Ill. App. 3d at 116. No matter if the existence of the policy holds value, *i.e.*, allowing the insured various ancillary business benefits, we find that the insurance itself is a service. At the time the Act was enacted in 1969 (P.A. 76-261, §101, eff. Aug. 1, 1969), Black's Law Dictionary defined service in terms of contracts as "being employed to serve another; duty or labor to be rendered by one person to

another." Black's Law Dictionary 1533 (4th ed. 1968). The duty here is to provide coverage for specified losses, without the requirement asserted by plaintiff of active exertion or effort.

¶ 28 The Act's language describing intangible personal property in the context of the reporting of business income provides further support for our conclusion. For purposes of reporting intangible personal property business income, the Act considers the utilization of the intangible property and the income or gains garnered *vis a vis* the intangible property. See 35 ILCS 5/304(a)(3)(B-1) (West 2012); 35 ILCS 5/304(a)(3)(C-5)(iii) (West 2012). Characteristically, commercial property and casualty insurance is unlike intangible personal property where it is not "utilized" like patents, copyrights, or trademarks, and it does not generate income or gains.

¶ 29 Critically, this court has stated that "[t]he sale of insurance is clearly a service." *Fox v. Industrial Casualty Insurance Co.,* 98 Ill. App. 3d 543, 546 (1981). Although the *Fox* court was interpreting language in the Consumer Fraud Act, the emphasis was on defining the rights of insureds. *Id.* The *Fox* court dismissed the defendant's argument that the plaintiff had no private remedy outside of the Insurance Code and considered the definition of merchandise in the Consumer Fraud Act, which included "any objects, wares, goods, commodities, *intangibles*, real estate ***, *or services.*" *Id.* (citing 805 ILCS 505/1(b) (West 2012)). The *Fox* court had the option of defining insurance as an intangible, while still allowing the plaintiff protection under the Consumer Fraud Act, but the court determined that "the sale of insurance is clearly a service." *Id.* This court has instructed that "[l]egislative intent as to the meaning of words can be ascertained from the history of the legislation or from the use of the term in other sections of the same or other Illinois statutes." *In re Application of County Collector,* 356 Ill. App. 3d 668, 670 (2005). With the lack of definition in the Act and the lack of case law developing "service" and

"insurance" in the context of tax allocation, we find the use of the terms in the Consumer Fraud Act to be persuasive. See also *Lang v. Consumers Insurance Service, Inc.*, 222 Ill. App. 3d 226, 238 (1991) (affirming that the sale of insurance is the sale of service).

¶ 30 Additionally, insurance has been referred to as a service in tax and insurance contexts in Illinois case law. In *A.B. Dick Co. v. McGraw*, 287 Ill. App. 3d 230 (1997), the Fourth District was asked to determine whether a parent company and its subsidy were unitary businesses for purposes of the Act. The Fourth District looked at the varying components of each company to ascertain whether they had functional integrity of operations and strong centralized management. In so doing, the court considered the personnel-related matters of the parent company and the subsidiary, namely, insurance, salaries, hiring determinations, legal issues, real estate management, and employee benefits. *Id.* at 235. In ultimately finding the companies were a unitary business for purposes of the Act, the court identified, in relevant part, that the parent company provided "all insurance services" to the subsidiary, as well as all "legal services" and "all real estate management services." *Id.* In *Landmark American Insurance Co. v. NIP Group, Inc.*, 2011 IL App (1st) 101155, this court considered whether an insurer had a duty to defend the insured in an underlying class action arising from the insured's alleged practice of sending unsolicited advertisements. The insured provided "professional services [which] included a host of insurance-related activities, including *** roles as an insurance wholesaler, managing general agent, general agent, underwriting manager, program administrator, agent, broker, surplus lines insurance broker, consultant, claims administrator, appraiser, and premium financier." *Id.* ¶ 34. This court considered these insurance-related activities to be "insurance services." *Id.* ¶ 36. See also *Margulis v. BCS Insurance Co.*, 2014 IL App (1st) 140286, ¶ 26 (assessing whether the

insurer had a duty to defend the insured for alleged improper advertising of "insurance services" using pre-recorded telephone messages).

¶ 31 We find further support in the Illinois Banking Act (205 ILCS 5/1 *et seq.* (West 2012)). In section 48.2 of the Banking Act, the legislature describes certain prohibited bank activities in conjunction with the granting of loans. 205 ILCS 5/48.2 (West 2012). In relevant part, banks are prohibited from granting any loan on the prior condition, agreement, or understanding that the borrower must contract with a specified person or organization for "insurances services," legal services, real estate services, or property management services. *Id.* Again, the legislature uses the term "insurance services" and prohibits banks that provide loans from making the loans contingent on the use of designated "insurance services." Stepping back to the bigger picture, plaintiff here was providing loans like a bank, or like a financial organization, and the Cananwill entities' customers used those loans to purchase insurance services, *i.e.*, they purchased the promise of indemnity against specified events for a given time. See also 30 ILCS 575/4f (West 2012) (statute encouraging the awarding of state contracts to businesses owned by minorities, women, and persons with disabilities for goods and services such as "insurance services").

¶ 32 Plaintiff argues that *Wendy's International, Inc., v. Hamer*, 2013 IL App (4th) 110678, demonstrates that insurance cannot be characterized as a service. We find plaintiff's reliance on *Wendy's* to be misplaced. In *Wendy's*, the Fourth District cited a supreme court case from 1941 describing insurance as "risk shifting and risk distribution." *Id.* ¶ 32 (citing *Helvering v. Le Gierse*, 312 U.S. 531, 539 (1941)). The Fourth District continued that insurance is " 'an agreement to protect the insured against a direct or indirect economic loss arising from a defined contingency whereby the insurer undertakes no present duty of performance but stands ready to

assume the financial burden of any covered loss.' " *Id.* (quoting *Allied Fidelity Corp. v. Commissioner of Internal Revenue*, 572 F.2d 1190, 1193 (7th Cir. 1978)). At issue in the case was whether the plaintiff, the parent company of a wholly-owned self-insurance company, was required to report the income of the subsidiary in its unitary business group's combined income tax returns. The Fourth District concluded that the subsidiary qualified as an insurance company for federal income tax purposes, and thus was subject to income taxes as part of the unitary business group, in part, because it "was a provider of insurance contracts and engaged in the requisite risk shifting and risk distribution." *Id.* ¶ 35. In so doing, the Fourth District did not define insurance in terms of a contract. Additionally, the court was not asked to allocate the subsidiary's income in terms of tangible personal property or services. Instead, the court was asked to observe the character of the subsidiary to determine if the business it performed was that of an insurance company. *Id.* ¶¶ 26-30. Contrary to plaintiff's argument, the *Wendy's* case does not stand for the proposition that insurance cannot be considered a service under federal law. Accordingly, *Wendy's* does not provide support for the questions before this court.

¶ 33 Moreover, plaintiff's reliance on *Allied* is misplaced. In *Allied*, the Seventh Circuit considered whether a bail bondsman's business qualified as an insurance company for federal income tax purposes. The Seventh Circuit ultimately concluded that the bail bondsman's business primarily was that of writing surety bail contracts, which were more akin to contracts to perform services than contracts of insurance. *Allied Fidelity Corp.*, 572 F.2d at 1193. The Seventh Circuit reasoned that a bail contract affects three parties, namely, the bail bondsman, the accused, and the court, unlike a contract for insurance affecting only the insurer and the insured, and the risk at issue was not merely a pecuniary one like that in the case of insurance. *Id.*

Critically, the Seventh Circuit did not say that a contract for insurance could not be a contract for services. The court merely stated that, under the facts presented, the bail bondsman's business performed services that did not qualify as insurance for federal income tax purposes. Similarly, our conclusion is limited to the facts of this case and the narrow application of commercial property and casualty insurance as a service.

¶ 34 Finally, plaintiff argues the Department admitted that insurance is intangible personal property in an income tax letter ruling. Specifically, plaintiff cites an October 5, 2012, general information letter in which the Department stated "[b]ased on the contents of your letter, it is our impression that your Client sells insurance which is considered 'intangible' property. Activities that involve sales other than of tangible personal property (*i.e.*, insurance) are not protected by Public Law 86-272." Plaintiff concedes that the Department is not bound by the legal conclusion adopted in its letter ruling; however, plaintiff urges this court to recognize and consider the Department's prior position.

¶ 35 As recognized by plaintiff, general information letters:

> "do not constitute statements of agency policy that apply, interpret or prescribe the tax laws administered by the Department. Information letters are not binding on the Department, may not be relied upon by taxpayers in taking positions with reference to tax issues and create no rights for taxpayers under the Taxpayers' Bill of Rights Act." 2 Ill. Adm. Code § 1200.120(c) (2012).

Accordingly, the Department's October 5, 2012, general information letter has no precedential value in this case. The letter was a general reference for the parties involved based on the facts presented. More importantly, the letter demonstrates that the Department was asked to determine

whether an out-of-state medical stop loss insurance company with an Illinois employee was exempt from state income taxes because the Illinois employee did not have a sufficient nexus to require the foreign company to pay Illinois taxes. The exemption applied to the solicitation of orders for the sale of tangible personal property. Under those facts, the Department advised that the Illinois employee was not engaged in the solicitation of orders for the sale of tangible personal property because insurance was not tangible personal property, and, thus, the tax exemption did not apply. The Department was not asked to provide an opinion as to whether insurance was a service as opposed to intangible personal property. We, therefore, find the general information letter does not lend guidance to the instant case.

¶ 36 In sum, we conclude that, for purposes of section 1501(a)(8)(C)(i) of the Act, plaintiff was a sales finance company because it was in the business of making loans for the express purpose of funding purchases for services by its clients, namely, the purchase of commercial property and casualty insurance. We, therefore, find plaintiff properly was classified as a financial organization for purposes of income tax allocation for the relevant years.

¶ 37 III. CONCLUSION

¶ 38 We affirm the judgment of the Tax Tribunal.

¶ 39 Affirmed.

¶ 40 PRESIDING JUSTICE ROCHFORD, specially concurring.

¶ 41 I concur in the result that the decision of the Tax Tribunal should be affirmed but for other reasons.

¶ 42 Plaintiff provided loans to finance the purchase of commercial property and casualty insurance policies. Plaintiff and the Department disagree as to whether the purchases of those

policies constitute the purchases of "services" under section 1501(a)(8)(C)(i). Plaintiff maintains their loans were not used to purchase services but rather intangible property. The Department disagrees and states the purchases of the commercial property and casualty policies were of services. I view this dispute as one over the interpretation of the term "services" as used in section 1501(a)(8)(c)(i).

¶ 43 The Act does not include a definition of "services." The parties cite to no Illinois case which recites the plain meaning of this term. Thus, in determining the common meaning of the term "services" as used in section 1501(a)(8)(c)(i) we may look to a dictionary for a definition. *Commonwealth Edison Co. v. Illinois Commerce Com'n*, 2014 IL App (1st) 132011 ¶ 33. Plaintiff refers to the Black Law Dictionary definition of *service* in the contractual context, which is as follows:

> "The being employed to serve another; duty or labor to be rendered by one person to another, the former being bound to submit his will to the direction and control of the latter. The act of serving the labor performed or the duties required. Occupation, condition, or status of a servant, etc. Performance of labor for benefit of another, or at another's command; attendance of an inferior, hired helper, slave, etc." Black's Law Dictionary 1533 (4th ed. 1968) (internal citations omitted).

¶ 44 Plaintiff reads this definition of service as requiring "active exertion of effort by a person" in concluding that the policies are not services. The majority emphasizes the "duty to be rendered" part of the definition and concludes after further analysis, that the policies may be considered services. The Department contends that the Black's Law definition is antiquated and

prefers to rely on Illinois case law which indicates that the insurance industry is a service business and therefore the polices are considered services.

¶ 45 The dictionary definition of service does not lead to a definitive, clear cut determination of whether commercial property and casualty insurance policies can be considered "services" under section 1501(a)(8)(c)(i) and gives rise to the opposing but reasonable constructions of this statutory provision. Where as here, a statute's "meaning cannot be interpreted from its plain language or if it is capable of being understood by reasonably well-informed persons in more than one manner", the statute is ambiguous. *Commonwealth Edison Co.*, 2014 Il App (1st) 132011 ¶ 21. And because of this ambiguity, we must give substantial weight and deference to the Tax Tribunal's interpretation of section 150(a)(8)(C)(i) that plaintiff's clients purchased services when they purchased their insurance policies. See *Citibank, N.A. v. The Illinois Dept. of Revenue*, 2017 IL App 121634 ¶ 39 ("[a] court will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with administering and enforcing the statute").

¶ 46 Specifically, the Tax Tribunal in construing section 1501(a)(8)(c)(i) held:

> "Under the common-law definition of insurance cited above, an insurer promises to assume certain risks and to indemnify, or compensate, the insured in the event of a loss. The service an insurer provides is to make an insured whole, subject to the terms and limits of an insurance agreement, by performing its obligations under that agreement to take an insurable loss upon itself. In the present case, clients of [plaintiff] entered agreements with underlying insurance companies who agreed to assume risk and perform in case of insurable loss covered under commercial property and casualty insurance

> policies. By providing insurance, those insurers provided a service to their clients of assuming risk and, upon loss, indemnifying those clients. It is that service for which the Cananwill entities provided financing to the insured clients so that they could purchase that service from insurance companies."

I believe the Tax Tribunal's interpretation of "services" as found in section 1501(a)(8)(c)(i) is both reasonable and permissive and worthy of substantial weight and deference.

¶ 47 For these reasons, I concur in the decision to affirm the Tax Tribunal's decision.