

ILLINOIS INDEPENDENT TAX TRIBUNAL

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

DEPARTMENT’S § 2-619 MOTION TO DISMISS COUNT II OF PETITION

Respondent, the Illinois Department of Revenue (hereafter the “Department”) by its attorney, respectfully moves this Tribunal, pursuant to 735 ILCS 5/2-619(a)(1) and 86 Ill. Admin. Code 5000.315, for an order dismissing Count II of the Petition of Premier Auto Finance, Inc. (“Petitioner”), for lack of subject matter jurisdiction. In support of its motion, the Department states as follows:

BACKGROUND

1. After conducting an audit of Petitioner for the tax years ending December 31, 2006, 2007, and 2008, the Department issued a Notice of Claim Denial (hereafter “Notice”) to Petitioner on June 22, 2015 denying Petitioner’s claims for refund.
2. The Notice was attached to the Petition as Exhibit A.

§ 2-619 STANDARD

3. A motion filed under § 2-619 provides a means of disposing of legal or easily proved factual matters at the outset of a case. *Cramsey v. Knoblock*, 191 Ill. App. 3d 756, 764 (4th Dist. 1989).
4. A § 2-619(a)(1) motion to dismiss is the proper avenue to raise lack of subject matter jurisdiction. *Zimmerman Equipment Co. v. F.R. Orr Grain Co.*, 29 Ill.App.3d 921, 922,

330 N.E.2d 881 (3rd Dist. 1975); *Ferris, Thompson and Zweig, Ltd., v. Esposito*, 2014 IL App (2d) 130129, ¶ 10.

5. “It is well settled that the issue of subject matter jurisdiction cannot be waived, stipulated to, or consented to by the parties. It can be raised at any time and even *sua sponte* when necessary.” *Eschbaugh v. Industrial Com'n*, 286 Ill.App.3d 963, 967-68 (5th Dist. 1996) (Internal citations omitted.).

SOVEREIGN IMMUNITY

6. In the Illinois Constitution of 1970, this state abolished the defense of sovereign immunity “[e]xcept as the General Assembly may provide by law.” *Fritz v. Johnston*, 209 Ill.2d 302, 309 (2004) (quoting Ill. Const. 1970, art. XIII, § 4).

7. In response, the legislature enacted the State Lawsuit Immunity Act (Immunity Act) (745 ILCS 5/0.01 et seq.). Section 1 of the Immunity Act states: “Except as provided in the Illinois Public Labor Relations Act, the Court of Claims Act, the State Officials and Employees Ethics Act, and Section 1.5 of this Act, the State of Illinois shall not be made a defendant or party in any court.” 745 ILCS 5/1.

8. Section 8 of the Court of Claims Act (705 ILCS 505/1 et seq.) holds that the Court of Claims has exclusive jurisdiction to hear:

(a) All claims against the State founded upon any law of the State of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency; provided, however, the court shall not have jurisdiction (i) to hear or determine claims arising under the Workers' Compensation Act or the Workers' Occupational Diseases Act, or claims for expenses in civil litigation, or (ii) to review administrative decisions for which a statute provides that review shall be in the circuit or appellate court

705 ILCS 505/8.

TRIBUNAL'S JURISDICTION

9. The Illinois Independent Tax Tribunal Act of 2012 (hereafter the "Tribunal Act") contains the following jurisdictional limitations:

Except as provided by the Constitution of the United States, the Constitution of the State of Illinois, or any statutes of this State, including, but not limited to, the State Officers and Employees Money Disposition Act, the Tax Tribunal shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, or Notice of Penalty Liability issued under [specific tax acts]

* * *

Jurisdiction of the Tax Tribunal is limited to Notices of Tax Liability, Notices of Deficiency, Notices of Claim Denial, and Notices of Penalty Liability where the amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds \$15,000, exclusive of penalties and interest.

35 ILCS 1010/1-45(a).

10. In regard to fees sought pursuant to the Illinois Administrative Procedure Act, (hereafter, the "APA"), the Tribunal Act provides in pertinent part:

The Tax Tribunal shall not assign any costs or attorney's fees incurred by one party against another party. Claims for expenses and attorney's fees under Section 10-55 of the Illinois Administrative Procedure Act shall first be made to the Department of Revenue. If the claimant is dissatisfied because of the Department's failure to make any award or because of the insufficiency of the award, the claimant may petition the Court of Claims for the amount deemed owed.

35 ILCS 1010/1-55(d). (Emphasis added.)

11. An administrative agency's powers are "strictly confined to those granted in [its] enabling statutes." *City of Chicago v. Fair Employment Practices Comm'n*, 65 Ill.2d 108, 115 (1976). See also *Vuagniaux v. Dep't of Prof'l Regulation*, 208 Ill.2d 173, 186 (2003) (holding that an administrative agency "has no general or common law authority. The only powers it possesses are those granted to it by the legislature, and any action it takes must be authorized by

statute.”).

12. In *City of Chicago v. Fair Employment Practices Comm’n*, 65 Ill.2d 108 (1976), the Illinois Supreme Court held: “Since the Commission is a statutory creature, its powers are dependent thereon, and it must find within the statute the authority which it claims. Such agencies have no general or common law powers.” *FEPC*, 65 Ill.2d at 113. (Internal citations omitted.) See also *Vuagniaux v. Dep’t of Prof’l Regulation*, 208 Ill.2d 173, 186 (2003) (holding that an administrative agency “has no general or common law authority. The only powers it possesses are those granted to it by the legislature, and any action it takes must be authorized by statute.”); *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, 2014 IL App (1st) 130544, ¶ 16 (holding that administrative agencies, including quasi-judicial ones, do not possess any common law powers or general jurisdiction that a circuit court exercises or possess).

13. It is well established that “attorney fees and the ordinary expenses and burdens of litigation are not allowable to the successful party in the absence of a statute, or in the absence of some agreement or stipulation specially authorizing the allowance thereof.” *FEPC*, 65 Ill.2d at 113.

14. In *City of Chicago v. Fair Employment Practices Comm’n*, the Illinois Supreme Court held that the agency had no authority to award attorneys’ fees or cost and that its order was void *ab initio*. *Id.* at 115.

**Count II Must Be Dismissed Because This Tribunal
Is Prohibited By its Enabling Act from Assigning Costs or Fees Under the APA**

15. In the case at bar, not only is there no specific grant of authority to award fees pursuant to § 10-55 of the APA, the Tribunal Act specifically precludes the Tribunal from hearing a claim under § 10-55 of the APA. Additionally, the Tribunal Act prohibits this Tribunal

from assigning “any costs or attorney's fees incurred by one party against another party.” 35 ILCS 1010/1-55(d).

16. In Count II, Petitioner specifically invoked Section 10-55 of the Illinois Administrative Procedure Act in its claim for “reasonable expenses and attorneys' fees.” Petition, Count II.

17. In Paragraph 38 Petitioner quotes Section 10-55 of the APA. In Paragraph 39 Petitioner cites Section 10-55 of the APA as support for its claim. And in its request for relief Petitioner requested:

WHEREFORE, Premier prays that the Tax Tribunal enter an Order finding that, pursuant to the APA, Premier is entitled to an award of its reasonable expenses and attorneys' fees incurred through the pursuit of this action and grant any further relief which the Tux Tribunal determines is appropriate.

18. Based on the Tribunal Act’s explicit exclusion of any claims made under or pursuant to Section 10-55 of the APA, Petitioner’s Count II cannot stand.

19. The Tribunal Act expressly prohibits this Tribunal from assigning costs or fees of litigation, and expressly requires a taxpayer to make claims for expenses and fees first to the Department and then to the Court of Claims. 35 ILCS 1010/1-55(d).

20. Therefore, this Tribunal has no jurisdiction to entertain or consider the relief sought in Count II, and Count II must be dismissed.

WHEREFORE, Department prays this Tribunal grant Department’s Motion to Dismiss Count II of Petitioner’s Petition without delay based on the express language of the Tribunal Act, or set a briefing schedule and oral argument date to hear Department’s Motion.

Respectfully Submitted,

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