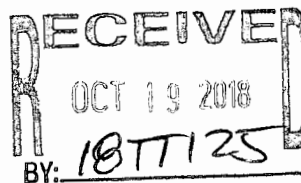


**STATE OF ILLINOIS
INDEPENDENT TAX TRIBUNAL**

SYMPHONY TRANSPORT, INC.,)
an Illinois corporation,)
7125 W. Gunnison St., No. 219)
Harwood Heights, Illinois 60706)
708-343-4100)
FEIN 38-3806379)
 Taxpayer)
 v.)
DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)



PROTEST

Introduction

1. SYMPHONY TRANSPORT, INC., an Illinois corporation (“Symphony”), d/b/a Big R Transport, by and through its attorney, Morrison & Mix, hereby protests the forty-seven Notices of Tax Liability, dated February 13, 2015 (periods 8/2014 – 9/2014), and Notices of Tax Liability, dated August 7, 2018 (period August 29, 2014), that contained penalty assessments for the periods August 2014 and September 2014, sent by the Illinois Department of Revenue (“IDOR”). Symphony’s petition for a late discretionary hearing was granted by Chief Administrative Law Judge Terry D. Charlton on August 28, 2018. A true copy of Judge Charlton’s order is attached hereto as Exhibit AA.

2. Symphony Transport, Inc. (“Symphony”), is an Illinois corporation, in good standing, engaged in the business of trucking, with its principal place of business in Cook County, Illinois. Symphony’s mailing address and taxpayer number are stated in the caption.

3. In August and September 2014, the months relevant to this matter, Symphony owned and operated one and only one semi-tractor. A single tractor was then (and is now) Symphony's only asset. Without any prior notice, in May 2015, Symphony was assessed penalties for "fuel tax violations" for those two months. Despite repeated requests from Symphony to be informed of the grounds for the assessed penalties, IDOR did not provide such information and did not afford Symphony a hearing to contest the penalties. The only information provided to Symphony by IDOR prior to August 7, 2018 (see par. 21, below), was procedurally inaccurate and prejudicial to Symphony's efforts to obtain due process regarding these wrongful penalty assessments.

Discussion

4. Symphony's IFTA certification was lost in 2011 when it was unable to keep up with its fuel tax obligation.¹ Following the suspension of its IFTA license, Symphony began operating its vehicles by leasing IFTA certification from other trucking companies. From 2011 to June 30, 2014, Symphony operated under credentials leased from TNT Trucking, LLC, an Illinois limited liability company. From July 1, 2014 to August 22, 2017, down to one truck, Symphony leased IFTA credentials from Margaret A. Furlong, an individual, d/b/a Dead Head Truckin'. At no time did Symphony operate without proper and valid IFTA certification. The appropriate decals were always properly affixed to Symphony's vehicles.

5. Throughout the entire period that it has leased IFTA certification, Symphony has always computed its proper IFTA tax liabilities and, if a quarterly tax was due, timely paid the amount of tax to the lessor. Symphony's agreement with TNT was that, in addition to lease payments made to TNT, if the IFTA tax computation indicated an overpayment by Symphony

¹ Symphony caught up with its past due obligation to IDOR through payments under its Chapter 11 plan of reorganization. See, case no. 12-B-46655, Bkrcty. N.D.Ill.

for a particular quarter, TNT would retain the refund. Symphony's agreement with Ms. Furlong allowed Symphony to keep any refunds of Symphony's IFTA tax overpayments.

6. A further significant difference in the lease agreements was that, while Ms. Furlong prepared and filed quarterly MFUT-15 IFTA returns for Symphony's IFTA mileage and tax, separate from the IFTA returns she filed for her own trucks, and made separate payments of quarterly IFTA tax obligations attributable to Symphony's mileage and purchases, TNT combined Symphony's mileage and fuel purchase information with that of TNT's vehicles (and, perhaps, that of other lessees) into a single, quarterly IFTA MFUT-15 return and payment or refund. Thus, under Ms. Furlong's system, Symphony could vouch for the accuracy of the separate Symphony-related returns. It could not do so for the TNT filings, even though, at TNT's request, some of the returns were prepared and filed from Symphony's computer with the combined mileage figures supplied to Symphony by TNT, along with TNT's account information and password.

7. Shortly after Symphony ended its agreement with TNT, IDOR began an investigation into the IFTA returns filed on TNT's account while it leased credentials to Symphony. Case Agent Kenyatta Carr was in charge of the investigation for IDOR. Symphony fully cooperated with the investigation, described the manner in which it prepared and filed IFTA returns for TNT, and, on October 15, 2014, provided Agent Carr with a box containing all of Symphony's 2012, 2013, and 2014 (to date) IFTA records and associated documents.² See attached Exhibit A. Agent Carr personally inspected Symphony's vehicle to determine that it was properly maintaining its log book and receipts and that its leased IFTA certification was valid, current, and properly displayed. At the meeting with Robert Warren, owner of Symphony,

²The box of original documents, most of which were not copied by Symphony before they were turned over to Agent Carr, remains in possession of IDOR, having not been returned to Symphony.

on October 15, 2014, when he picked up Symphony's documents and inspected Symphony's tractor, Agent Carr recommended that Symphony and Ms. Furlong reduce their oral lease of the IFTA license, which had been in effect since July 1, 2014, to writing. Symphony and Ms. Furlong did so within a matter of days. See attached Exhibit B (written lease).

8. On October 13, 2014, Ms. Furlong computed the amount Symphony owed in IFTA taxes for the third quarter of 2014, which includes the two months involved in this matter. Symphony paid the full amount due (\$648.07) to Ms. Furlong. See attached Exhibit C. On October 16, 2014, Ms. Furlong, in accordance with the lease agreement with Symphony, submitted to the Department of Revenue the MFUT-15 IFTA Quarterly Return for the third quarter of 2014 and the full payment of the tax due from Symphony's operations, plus the processing fee. See attached Exhibits D and E. The timeliness and amount of the payment for the third quarter of 2014 has never been challenged by the Illinois Department of Revenue.

9. Symphony continued to operate under Ms. Furlong's IFTA authority through August 22, 2017. All IFTA taxes were timely and accurately reported and paid in full during the entire time Symphony leased and operated under Ms. Furlong's account.

10. In May 2015, without any prior notice, Symphony received from the Illinois Department of Revenue a "Taxpayer Statement," dated May 12, 2015, indicating that Symphony had been issued penalties for "Motor Fuel Violations" of \$49,000.00 for August 2014 and \$44,000.00 for September 2014. No tax was alleged to be due, nor any interest; only the penalties. No explanation was given regarding any basis for the assessment of penalties against Symphony for those months and no prior notices had been sent to Symphony that it was in jeopardy for assessment of penalty liabilities or that any penalties had been assessed. See attached Exhibit F.

11. Inasmuch as Symphony, through Ms. Furlong, has paid its full fuel tax for those months on time, Symphony's owner, Robert Warren, was certain that these penalty assessments were made in error. On May 22, 2015, Symphony sent a letter to IDOR requesting a "detailed statement of the origins of the penalties." See attached Exhibit G.

12. When no response to its request was received, Symphony followed up the May 22, 2015, letter by sending a fax to Officer William Kieffer of IDOR on June 6, 2015, requesting the same information. See attached Exhibit H.

13. When no response was received to the letter and the fax, Symphony contacted the IDOR by telephone and spoke with Steve Basso, Revenue Tax Specialist III of IDOR, who, on June 29, 2015, emailed to Symphony a blank BOA-1 "Board of Appeals Petition" form in response to Symphony's request for information, which Mr. Basso telephonically told Symphony would stop collection efforts until after Symphony was given a hearing on the penalties. See attached Exhibit I.

14. Symphony filled out and returned the BOA-1 to the Board of Appeals in June 2015, along with a request for a temporary restraining order.

15. Symphony heard nothing further regarding the matter for almost three years, was not provided any explanation for the assessment of penalties, and was not given a hearing on the assessments. It did not receive any additional statements, demands, or bills from IDOR showing the penalties. Symphony reasonably concluded that IDOR has corrected its erroneous assessments and did nothing further to obtain a hearing.

16. Without prior notice of any proceedings, having never received any explanation for the assessment of penalties, and being provided no opportunity for a hearing, in March 2018, Symphony received a copy of an order from the Board of Appeals, issued March 13, 2018 (almost three years after the Taxpayer Notice), that stated as follows:

After carefully reviewing the administrative record, the Board of Appeals finds that the Petitioner has failed to establish any credible basis for relief herein. In connection with this finding, The Board notes that the Petitioner did not have an appropriate written lease agreement in force during the time periods wherein its trucks committed all of the violations currently in question. Therefore, any lease agreements it may have entered into subsequent to such periods do not provide any basis for relief herein because they are irrelevant.

See attached Exhibit J.

17. The Board's order was erroneous in a number of respects, both procedurally and factually. Procedurally, the so-called "administrative record," purportedly reviewed by the BOA, either does not exist or, if such a record does exist, it was never provided to Symphony, despite Symphony's multiple requests for documentation supporting the assessed penalties. Symphony was not informed what alleged "violations" it supposedly committed in August and September 2014. Such a failure to provide Symphony with notice of alleged violations and to allow Symphony a chance to refute such allegations before assessing almost \$100,000 in penalties was a gross violation of due process.

18. Regarding the penalties, Illinois statutes provide a limited number of grounds to assess penalties for fuel tax violations: Operating without a proper license could lead to a penalty of \$1,000 for a first offense and \$2,000 for subsequent offenses (35 ILCS 505/13a-6) and a late filing of a IFTA return could lead to a penalty of the greater of \$50 or 10% of the tax due

(35 ILCS 505/13a-3).³ None of the financial penalties for these types of violations should have remotely approached the huge penalties assessed against Symphony for the two months in issue.

19. Factually, there is no statutory or other regulatory requirement that a lease of IFTA authorization must be in writing. In fact, Illinois Carrier Compliance Manual regarding the motor fuel tax specifically provides that, in the case of IFTA license leases for over thirty days, such as the lease Symphony had with Ms. Furlong, “[i]n the absence of a written agreement or contract. . .the lessee (carrier) is responsible for reporting and paying [IFTA] motor fuel use tax.” (Manual, p. 4, emphasis added.) See attached Exhibit K. That provision of IFTA has been in effect since July 1, 1996. There is also no prohibition against memorializing a previously made oral agreement, which was what Agent Carr recommended that Symphony and Ms. Furlong do. It is interesting and telling that the Board, which claimed that it reviewed the “administrative record,” concluded in its formal order that Symphony’s “trucks” [emphasis added] committed violations that led to the assessments. In fact, at all times relevant to this matter—specifically for the months of August and September 2014—Symphony owned and operated one and only one truck and operated that one tractor entirely under the validly leased IFTA license of another trucker; a truck and a lease that the IDOR investigator was aware of and offered no objection. Also, there is no basis for imposition of the amount of the penalties against Symphony. The company paid in full and on time its entire IFTA tax due for the quarter that contained the two months for which the penalties were imposed. The penalties are clearly excessive under the circumstances. A total tax due of less than \$700 for a full quarter cannot give rise to penalties of \$49,000 and \$44,000 for two of those three months, when the tax liability was fully reported, fully paid on time, and never challenged or reassessed by IDOR.

³ Other financial consequences for fuel tax violations are in the form of either interest on the unpaid tax or criminal fines. Neither of these economic damages has been charged against Symphony in this matter.

20. Following receipt of the March 13, 2018, order, Symphony submitted another BOA-1 seeking to have the penalties overturned. Although the form filed by Symphony clearly checked the box to indicate a request for abatement of the penalties for reasonable cause, the Board treated the petition as an offer in compromise and requested that Symphony provide financial documents to support the nonexistent offer in compromise. See attached Exhibit L. When the documents were not sent—since there was no proposed offer in compromise—on June 27, 2018, the Board of Appeals dismissed the “offer in compromise” for lack of jurisdiction and documentation. See attached Exhibit M.

21. On August 7, 2018, over three years from Symphony’s request for information concerning the penalties, Revenue Office Jim Diamond, who was in charge of collecting the assessment against Symphony, sent to Symphony a series of emails each containing a Notice of Tax Liabilities, each dated February 2015, presumably based on separate IFTA citations issued in August and September 2014. See attached Group Exhibit N. This was the first time Symphony had seen the Notices of Tax Liabilities; it still has never seen any of the citations on which the notices were supposedly based. In addition to the Notices, Agent Diamond also sent Symphony a blank AH-4 form to assist the company in protesting these unfair assessments.

22. Although it can now be surmised that the penalties were erroneously based on Symphony not having a lease of IFTA authority during those two months—clearly wrong—Symphony has never been provided any formal factual basis for the huge penalties imposed by IDOR in this matter, penalties that Symphony cannot and will not ever be able to afford. The penalties were not based on the amount of fuel tax chargeable to Symphony’s one truck; nor could the penalties be based on late or inaccurate filing of the third quarter 2014 IFTA return. Symphony’s tractor at all times displayed the valid IFTA certificate that it had legally leased

from Ms. Furlong during both months for which the penalties were assessed. There is just no legal or factual grounds for the imposition of \$93,000 (now \$94,000—an additional \$1,000 was added to the August 2014 penalty in a statement dated June 15, 2018, without any notice or explanation for the increase) in penalties against Symphony for August and September 2014. See attached Exhibit O.

23. The assessment of these penalties without the prior disclosure of the basis for the assessments and without the opportunity for Symphony to contest the charges clearly violates the company's due process right to a fair and impartial hearing of the allegations against it. Symphony's failure to avail itself of the Administrative Review Act is understandable inasmuch as Symphony followed the advice of IDOR and submitted its protest to the Board of Appeals without first being provided an actual administrative hearing and decision for it to appeal.

24. The affidavit of Robert Warren, owner of Symphony Transport, Inc., confirming the facts stated herein, is attached hereto as Exhibit P.

Relief Sought

25. Based on the facts and attached affidavits, Symphony now seeks a determination that the penalties assessed for its alleged failure to operate its truck under a valid IFTA lease were assessed in error and that the penalties be fully and finally abated and held for naught.

WHEREFORE, Symphony Transport, Inc., an Illinois corporation, requests that the Independent Tax Tribunal abate all the penalties assessed against the company. Symphony believes that it has a strong and convincing case that it should not have been assessed penalties for fuel tax violations for the months of August and September 2014.

Respectfully submitted,

SYMPHONY TRANSPORT, INC.,
taxpayer,

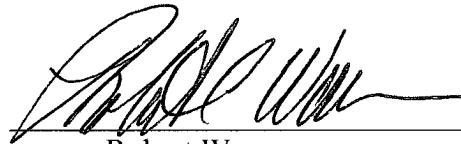
by 

One of its attorneys

Douglas K. Morrison
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Chicago, Illinois 60602
312-726-0888
dkmorrison@morrisonandmix.com

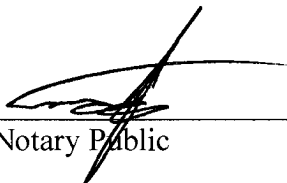
CERTIFICATION

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned, president of Symphony Transport, Inc., an Illinois corporation, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matter the undersigned certifies as aforesaid that he verily believes the same to be true.



Robert Warren

SUBSCRIBED AND SWORN TO
before me this 16th day of OCTOBER, 2018.



Notary Public

(seal)





**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

Willard Ice Building
101 West Jefferson Street – Level 5SW
Springfield, IL 62702
(217)782-6995

August 28, 2018

Douglas K. Morrison
Morrison & Mix
120 N. LaSalle St., Suite 2750
Chicago, Illinois 60602

Re: Late Discretionary Hearing Granted – Tribunal Jurisdiction

Symphony Transport Inc.

(47) Notices of Tax Liability, dated February 13, 2015 (Periods 8/2014 – 9/2014)

Account ID: 07340-47040

Letter IDs:

CNXXX1X891942566	CNXXX5523233441	CNXXX1626X651687	CNXXXX2838878887
CNXXX13576297121	CNXXX82X7588XX5	CNXXX18945XX6249	CNXXXX14967X16X0
CNXXX12234119842	CNXXX686541X723	CNXXX176X2828968	CNXXXX4181X56163
CNXXX149184744X5	CNXXX9549765287	CNXXX2X287183527	CNXXXXX825612965
CNXXX11563X312X2	CNXXX6194322X85	CNXXX1693174X324	CNXXX35X9967523
CNXXX14247385766	CNXXX8878676644	CNXXX19616X94884	CNXXXX216779X243
CNXXX129X52X8481	CNXXX7536499365	CNXXX182739176X1	CNXXXX48521448X1
CNXXX15589563X45	CNXXX1X22X853924	CNXXX2X958272161	CNXXXXX49XX68647
CNXXX11227486887	CNXXX5858777764	CNXXX16596196XX4	CNXXXX31744232X8
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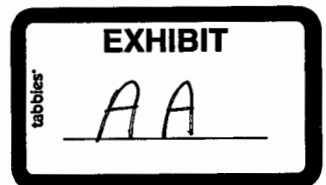
(1) Notice of Tax Liability, dated August 7, 2018 (Period August 29, 2014)

Letter ID: CNXXX2XX731X5126

Dear Mr. Morrison:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing on behalf of Symphony Transport Inc. regarding the above forty-seven (47) Notices of Tax Liability. Based on the information provided in your request, I believe that it is appropriate to **grant your request** for a late discretionary hearing for those (47) Notices of Tax Liability. Your client was issued another Notice of Tax Liability on August 7, 2018 that was timely protested and falls within the same liability period. I have included that Notice of Tax Liability in this letter.

The amount of liability at issue for this protest exceeds the statutory amount for which the Department has jurisdiction. For late discretionary hearings that are granted and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*



The Tax Tribunal's rules provide that when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.

I recommend that you review the information provided on the Tax Tribunal's website (www.illinois.gov/taxtribunal) and contact them if you have any questions.

Sincerely,



Terry D. Charlton
Chief Administrative Law Judge

TC