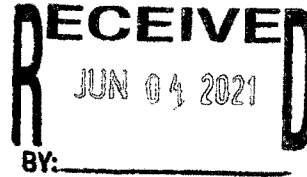


ILLINOIS INDEPENDENT
TAX TRIBUNAL

AMERICAN AVIATION SUPPLY LLC,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT)
 OF REVENUE,)
)
 Respondent.)



PETITION

American Aviation Supply LLC (“Petitioner”) hereby petitions the Illinois Independent Tax Tribunal (the “Tribunal”) to review and reverse the Notice of Tentative Audit Denial of Claim dated April 26, 2021 issued by the Illinois Department of Revenue (the “Department”) for the reasons stated below:

INTRODUCTION

1. Petitioner is a single-member limited liability company (“LLC”) formed in Delaware in 2004 with its principal place of business in Texas. Its mailing address, telephone number, and Illinois Account ID are as follows:

American Aviation Supply LLC
1 Skyview Dr, MD 8B401
Fort Worth, TX 76155-1801
Telephone No. (682) 278-0449
Illinois Account ID: 3585-1899

2. During January 2015 through June 2016 (the “Periods in Issue”), Petitioner had its principal place of business in Sycamore, Illinois at the following address:

308 West State St.
Mezzanine Suite
Sycamore, Illinois 60178

3. The Department erroneously failed to exclude from the Retailer’s Occupation Tax (the “ROT”) sales of aviation fuel to American Airlines, Inc. (“American Airlines”) and U.S. Airways Inc. (“U.S. Airways,” and together with American Airlines, the “Airlines”) that were purchased for the purpose of temporarily storing the fuel in Illinois prior to its transportation and consumption thereafter solely outside of Illinois. Such sales are exempt from the ROT under 35 ILCS § 120/2-5(38) (the “Expanded Temporary Storage Exemption”).

JURISDICTION AND VENUE

4. Petitioner timely filed its Forms ST-1, Sales and Use Tax and E911 Surcharge Return, for the Periods in Issue.

5. On June 29, 2018 and July 2, 2018, Petitioner filed Forms ST-1-X, Amended Sales and Use Tax and E911 Surcharge Return, for the January 2015 to June 2016 tax periods (the “Refund Claims”).

6. The Refund Claims total \$30,980,341, plus interest.

7. The Department initiated an audit of the Refund Claims.

8. On January 8, 2021, the Department issued a Notice of Proposed Claim Denial, proposing to deny the Refund Claims in the amount of \$30,980,341. A copy of the Notice of Proposed Claim Denial is attached as **Exhibit A**.

9. On January 22, 2021, Petitioner waived its right to seek review of the proposed claim denial by the Department’s Informal Conference Board (“ICB”). A copy of the Informal Conference Board Waiver is attached as **Exhibit B**.

10. On April 26, 2021, the Department issued a Notice of Tentative Audit Denial of Claim (the “Notice”) to Petitioner denying the Refund Claims in the amount of \$30,980,341. A copy of the Notice is attached as **Exhibit C**.

11. Petitioner also filed Forms ST-1-X, Amended Sales and Use Tax and E911 Surcharge Return, for the July 2011 to December 2014 tax periods (the “2011 – 2014 Refund Claims”) on the same grounds as the Refund Claims at issue in this Petition, and the Department issued a Notice of Tentative Audit Denial of Claim denying the 2011 – 2014 Refund Claims.

12. On March 15, 2021, Petitioner filed a petition with the Tribunal for its 2011 – 2014 Refund Claims, which was assigned the case number 21 TT 27 (the “First Petition”).

13. The issues in this petition are identical to the issues presented in the First Petition.

14. The Tribunal has jurisdiction over this matter pursuant to 35 ILCS 1010/1-45(a) because the Notice involves an amount greater than \$15,000 and because Petitioner timely filed this Petition within 60 days of the issuance of the Notices pursuant to 35 ILCS 1010/1-50(a).

BACKGROUND AND RELEVANT FACTS¹

15. Petitioner is an aviation fuel supplier for the Airlines.

16. Petitioner contracts, purchases, and arranges for shipment and delivery of aviation fuel into Illinois from various aviation fuel suppliers and resells the aviation fuel to the Airlines.

17. Petitioner charges and collects the ROT from the Airlines on its sales of aviation fuel to the Airlines and remits the ROT to the Department.

18. Petitioner delivers the aviation fuel to the Airlines in Illinois, and the Airlines temporarily store the aviation fuel at the consortium tanks at O’Hare International Airport.

¹ Unless otherwise indicated, all facts pertain to the Periods in Issue.

19. The Airlines transport the fuel that is the subject of the Refund Claims outside of Illinois and thereafter consume the fuel solely outside of Illinois in their global aviation common carrier air transportation activities.

20. The Department issued American Airlines an Expanded Temporary Storage Permit No. 4011-3450 (Form ST-50) effective November 1, 2010.

21. The Department issued U.S. Airways an Expanded Temporary Storage Permit No. 0252-2845 (Form ST-50) effective May 1, 2014.

22. The Airlines provided Petitioner with Forms CRT-62 certifying that a percentage of its fuel purchases ranging from 98.45% to 98.77% are exempt under the Expanded Temporary Storage Exemption.

APPLICABLE LAW

Expanded Temporary Storage Exemption

23. Effective January 1, 2002 and through June 30, 2016, the Illinois legislature adopted the Expanded Temporary Storage Exemption, which exempts from the ROT “tangible personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois (i) for the purpose of subsequently transporting it outside this State for use or consumption thereafter solely outside this State...” 35 ILCS § 120/2-5(38).

24. The Expanded Temporary Storage Exemption statute instructs the Director of Revenue to “issue a permit to any taxpayer in good standing with the Department who is eligible for the exemption under this paragraph (38).” *Id.* The permit “shall authorize the holder, to the extent and in the manner specified in the rules adopted under this Act, to purchase tangible personal property from a retailer exempt from the taxes imposed by this Act.” *Id.*

25. 86 Ill. Admin. Code § 130.120(uu) restates the Expanded Temporary Storage

Exemption from the statute and cross-references 86 Ill. Admin. Code § 150.310. Subsection (a)(6) of that regulation is the permitting regulation authorized by the Expanded Temporary Storage Exemption (the “Permitting Regulation”). 86 Ill. Admin. Code § 150.310(a)(6).

26. The Permitting Regulation first defines “centralized purchasing” as “the procurement of tangible personal property by persons who purchase tangible personal property solely for use or consumption outside Illinois, who take delivery of that tangible personal property in Illinois and who temporarily store that tangible personal property in Illinois prior to transporting it outside the State for use or consumption solely outside Illinois.” *Id.* § 150.310(a)(6)(A).

27. The Permitting Regulation then requires persons who wish to take advantage of the Expanded Temporary Storage Exemption to apply in writing to the Department to obtain an expanded temporary storage permit. *Id.* § 150.310(a)(6)(C).

28. The Permitting Regulation then provides that a taxpayer holding a valid expanded temporary storage permit “may claim the expanded temporary storage exemption by providing their Illinois suppliers with a certification” stating that it meets the requirements of the Expanded Temporary Storage Exemption. *Id.* § 150.310(a)(6)(D).

29. If the “holder knows that a certain percentage of all his or her purchases from a given seller will qualify for the expanded temporary storage exemption, he or she may provide a blanket certificate of expanded temporary storage stating that a designated percentage of purchases qualify for the expanded temporary storage exemption.” *Id.*

30. In January 2002, the Department issued an information bulletin, FY 2002-25, stating that Form CRT-62 is available for purchasers to use for the purpose of informing the seller of the applicable percentage of purchases subject to the Expanded Temporary Storage Exemption.

Other Department forms and guidance also support this unit approach.

Interest on Refund Claims

31. The Department owes interest on amounts refunded or credited by it pursuant to the filing of an amended return at the applicable rate determined from the due date of the original return or date of overpayment, whichever is later, to the date of the payment by the Department.

35 ILCS §§ 735/3-1A, 735/3-2(a), (d); 86 Ill. Admin. Code § 700.230(b), (f).

COUNT I

32. Petitioner incorporates by reference the allegations contained in the above paragraphs.

33. The Department erroneously found that the Airlines' fuel purchases that are the subject of the Refund Claims were not exempt from the ROT under the Expanded Temporary Storage Exemption.

34. Under the Expanded Temporary Storage Exemption, the Airlines' fuel purchases are exempt because the Airlines were engaged in centralized purchasing, purchased the fuel from Petitioner, an Illinois retailer, and upon receipt of the fuel in Illinois, temporarily stored it in Illinois for the purpose of subsequently transporting it outside of Illinois for consumption thereafter solely outside of Illinois. 35 ILCS § 120/2-5(38).

35. As required by the Permitting Regulation, the Airlines obtained expanded temporary storage permits and provided Petitioner with a certification (Form CRT-62) stating that a percentage of their fuel purchases ranging from 98.45% to 98.77% were exempt under the Expanded Temporary Storage Exemption. 86 Ill. Admin. Code § 150.310(a)(6)(D).

36. The Permitting Regulation and the Department's own Form CRT-62 and other guidance expressly allow for the exemption to apply on a per unit basis when a percentage of the purchased property (but not all) qualifies for the Expanded Temporary Storage Exemption. *Id.* §

150.310(a)(6)(D).

37. The Department's denial of Petitioner's Refund Claims is contrary to the statute, regulations, and the Department's own guidance and forms. Thus, Petitioner seeks a refund of the ROT for the Periods in Issue.

COUNT II

38. Petitioner incorporates by reference the allegations in the preceding paragraphs.

39. The Department owes interest on amounts refunded or credited pursuant to the Refund Claims at the applicable rate determined from the due date of the original return or date of overpayment, whichever is later, to the date of the payment by the Department. 35 ILCS §§ 735/3-1A, 735/3-2(a), (d); 86 Ill. Admin. Code § 700.230(b), (f).

40. The Refund Claims are valid and, therefore, the Department is obligated to pay interest.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Tribunal grant the Refund Claims, plus interest, direct the Department to pay such amounts to Petitioner and grant such other and further relief as the Tribunal may deem just and proper.

DATED: June 1, 2021

Respectfully submitted,

Mary A. McNulty
Telephone: 214.969.1187
Mary.McNulty@tklaw.com
Lee S. Meyercord
Telephone: 214.969.1315
Lee.Meyercord@tklaw.com
PRO HAC VICE APPLICATIONS PENDING



Michael D. Karson (ARDC No. 6300158)
Telephone: 214.969.2559
Michael.Karson@tklaw.com

COUNSEL TO PETITIONER

THOMPSON & KNIGHT LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201

EXHIBIT A

Notice of Proposed Claim Denial for Sales, Use, and Excise Taxes and Fees



January 8, 2021



AMERICAN AVIATION SUPPLY LLC
MD8B401
1 SKYVIEW DR
FORT WORTH TX 76155-1801

Letter ID: L0182005488
Taxpayer ID: 20-1648730
Account ID: 3585-1899
Audit ID: A241614976
Return type: ST-1
Audit periods: 01/2015 - 06/2016

We have received and audited your claim for credit, listed below. We propose to deny your claim for credit in part or in the entirety as follows:

Claim reporting period:	1/1/2015 - 6/30/2016
Claim filing date:	29-Jun-2018
Amount of claim:	\$30,980,341.00
Amount of proposed denial:	<u>\$30,980,341.00</u>
Net claim allowed:	\$0.00

Our work papers showing the calculations and explanations for the amount of proposed adjustments are attached for your review.

If you agree with the figures as shown, contact us using the information listed at the end of the letter for further instructions. Please note, if you sign the Audit Report, you waive the right to seek review by the Informal Conference Board.

If you do not agree with the figures as shown, you may request a review of this proposed claim denial by the Informal Conference Board (See 20 ILCS 2505/2505-510). To do this, you must complete Form ICB-1, Request for Informal Conference Board Review, within 60 days from the date of this notice and mail it along with a copy of the auditor's work papers and a copy of this notice, to:

INFORMAL CONFERENCE BOARD
100 W RANDOLPH SUITE 7-286
CHICAGO IL 60601

If you do not agree to the proposed denial or request a review with the Informal Conference Board within 60 days from the date of this notice, we will issue a **Notice of Tentative Audit Denial of Claim** for the amount of the proposed adjustment shown above. At that time, you have the right to protest the proposed adjustments. Your protest rights will be outlined in any subsequent notices.

You may expedite the audit process by signing the enclosed Form EDA-ICBW, Informal Conference Board Waiver, stating you waive the right to seek review by the Informal Conference Board. For information about the Informal Conference Board, please see PIO-58, Informal Conference Board Review, available on our website, tax.illinois.gov. Signing the waiver does not indicate agreement or disagreement with the audit findings.

Sincerely,

Wanda Roberson
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
AUDIT- SPI-A, IL EPT OF REVENUE, PO BOX 19475
IL 62794

217 299-7864
217 299-7864 cell
217 785-3251 fax

wanda.roberson@illinois.gov

EXHIBIT B

Informal Conference Board Waiver



AMERICAN AVIATION SUPPLY LLC
MD8B401
1 SKYVIEW DR
FORT WORTH TX 76155-1801

Letter ID: L0182005488
Account ID: 3585-1899
Audit ID: A241614976
Audit Periods: 01/2015 - 06/2016

I waive the right to seek review by the Informal Conference Board. By signing this waiver, I am not indicating agreement or disagreement with the audit. I understand this waiver must be signed by the taxpayer, a duly authorized corporate officer, partner, or fiduciary of the taxpayer, or by the taxpayer's representative under a valid power of attorney.

A handwritten signature in black ink, appearing to be "Wanda Roberson", written over a horizontal line.

Taxpayer's signature

CHIEF TAX OFFICER

Title

01.22.2021

Date

Taxpayer representative's signature

Title

Date

To waive your right to ICB review, return the completed form to:

Wanda Roberson
Revenue Auditor

AUDIT BUREAU
ILLINOIS DEPARTMENT OF REVENUE
AUDIT- SPI-A, IL EPT OF REVENUE, PO BOX 19475
IL 62794-0000

217 299-7864
217 299-7864 cell
217 785-3251 fax
wanda.roberson@illinois.gov email

EXHIBIT C

Notice of Tentative Audit Denial of Claim



April 26, 2021



Letter ID: CNXXX11251974485

Taxpayer ID: 20-1648730
Account ID: 3585-1899
Audit ID: A241614976
Return type: ST-1
Audit periods: 01/2015 - 06/2016

#BWNKMGV

#CNXX X112 5197 4485#

AMERICAN AVIATION SUPPLY LLC
MD8B401
1 SKYVIEWDR
FORT WORTH TX 76155-1801

We have audited your claims for credit filed on Form ST-1-X, Amended Sales and Use Tax and E911 Surcharge Return, described above totaling \$30,980,341.00 of which we are denying the entire amount because we have not established that this tax was paid in error or that issuing a credit memorandum would not result in unjust enrichment to you.

If you do not agree, you may contest this tentative denial of claim by following the instructions listed below.

- If the amount of the tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is **June 25, 2021**. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail Form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this tentative denial of claim will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are below.

Sincerely,

John Pitz
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579
217 785-3251 fax

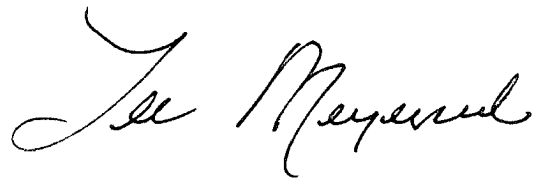
John.Pitz@illinois.gov

PRO HAC VICE STATEMENT

As attorneys authorized to practice law in Texas, we certify that we have complied with the Illinois Supreme Court procedures for admission to practice *pro hac vice* in Illinois for this matter and a copy of our verified statements submitted to the Illinois Attorney Registration and Disciplinary Commission are attached.



Mary A. McNulty



Lee Meyercord

Rule 707 Statement

American Aviation Supply LLC v. Illinois Department of Revenue

Verified Statement of Out-of-State Attorney Pursuant to Supreme Court Rule 707

I, Mary A. McNulty, submit this Verified Statement pursuant to Illinois Supreme Court Rule 707.

1. My full name is Mary Anthony McNulty, my date of birth is June 26, 1963. The address of offices from which I practice law and related email address and telephone numbers are as follows:

Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Direct: (214) 969-1187
Fax: (214) 999-3182
Email: mary.mcnulty@tklaw.com

2. I represent American Aviation Supply LLC in *American Aviation Supply LLC v. Illinois Department of Revenue* in the Illinois Independent Tax Tribunal:

3(a). I have filed one other appearance pursuant to this rule during this calendar year.

3(b). I have received a registration number from the ARDC (6337359).

4(a). I list each jurisdiction of admission, including any state, territory, or commonwealth of the United States, the District of Columbia, or in a foreign country, and my full admission name and license number.

State of Texas
Mary Anthony McNulty
Texas State Bar No. 13839680

4(b). I attach a letter or certificate of good standing for each of the jurisdictions listed in paragraph 4(a) above.

5. I have no office or other presence in Illinois for the practice of law.

6. I submit to the disciplinary authority of the Supreme Court of Illinois;

7. I have undertaken to become familiar with and to comply, as if admitted to practice in Illinois, with the rules of the Supreme Court of Illinois, including the Illinois Rules of

Professional Conduct and the Supreme Court Rules on Admission and Discipline of Attorneys, and other Illinois law and practices that pertain to the proceeding;

(8) The full name, business address and ARDC number of the Illinois attorney with whom I have associated in the matter is:

Michael D. Karson
ARDC No. 6300158
Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
214.969.2559
Michael.Karson@tklaw.com

9. I certify that I have served this Statement upon all parties to the proceeding, local counsel Michael Karson, my client American Aviation Supply LLC, and the ARDC and that these parties are all entitled to service under this rule.

Verification

I verify the accuracy and completeness of each of the above statements.

A handwritten signature in black ink that reads "Mary A. McNeely". The signature is written in a cursive, flowing style.

Date: June 1, 2021

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

June 01, 2021

Re: Ms. Mary Anthony McNulty, State Bar Number 13839680

To Whom It May Concern:

This is to certify that Ms. Mary Anthony McNulty was licensed to practice law in Texas on May 05, 1989, and is an active member in good standing with the State Bar of Texas. "Good standing" means that the attorney is current on payment of Bar dues; has met Minimum Continuing Legal Education requirements; and is not presently under either administrative or disciplinary suspension from the practice of law.

This certification expires 30 days from the date, unless sooner revoked or rendered invalid by operation of rule or law.

Sincerely,

Seana Willing
Chief Disciplinary Counsel
SW/web



Rule 707 Statement

American Aviation Supply LLC v. Illinois Department of Revenue

Verified Statement of Out-of-State Attorney Pursuant to Supreme Court Rule 707

I, Leonora (Lee) S. Meyercord, submit this Verified Statement pursuant to Illinois Supreme Court Rule 707.

1. My full name is Leonora Susan Meyercord, my date of birth is June 22, 1984. The address of offices from which I practice law and related email address and telephone numbers are as follows:

Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Direct: (214) 969-1315
Fax: (214) 999-1590
Email: lee.meyercord@tklaw.com

2. I represent American Aviation Supply LLC in *American Aviation Supply LLC v. Illinois Department of Revenue* in the Illinois Independent Tax Tribunal:

3(a). I have filed one other appearance pursuant to this rule during this calendar year.

3(b). I have received a registration number from the ARDC (6337358).

4(a). I list each jurisdiction of admission, including any state, territory, or commonwealth of the United States, the District of Columbia, or in a foreign country, and my full admission name and license number.

State of Texas
Leonora Susan Meyercord
Texas State Bar No. 24074711

4(b). I attach a letter or certificate of good standing for each of the jurisdictions listed in paragraph 4(a) above.

5. I have no office or other presence in Illinois for the practice of law.

6. I submit to the disciplinary authority of the Supreme Court of Illinois;

7. I have undertaken to become familiar with and to comply, as if admitted to practice in Illinois, with the rules of the Supreme Court of Illinois, including the Illinois Rules of

Professional Conduct and the Supreme Court Rules on Admission and Discipline of Attorneys, and other Illinois law and practices that pertain to the proceeding;

(8) The full name, business address and ARDC number of the Illinois attorney with whom I have associated in the matter is:

Michael D. Karson
ARDC No. 6300158
Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
214.969.2559
Michael.Karson@tklaw.com

9. I certify that I have served this Statement upon all parties to the proceeding, local counsel Michael Karson, my client American Aviation Supply LLC, and the ARDC and that these parties are all entitled to service under this rule.

Verification

I verify the accuracy and completeness of each of the above statements.

A handwritten signature in cursive script, appearing to read "Lee Meyer".

Date: June 1, 2021

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

June 01, 2021

Re: Ms. Leonora Susan Meyercord, State Bar Number 24074711

To Whom It May Concern:

This is to certify that Ms. Leonora Susan Meyercord was licensed to practice law in Texas on November 05, 2010, and is an active member in good standing with the State Bar of Texas. "Good standing" means that the attorney is current on payment of Bar dues; has met Minimum Continuing Legal Education requirements; and is not presently under either administrative or disciplinary suspension from the practice of law.

This certification expires 30 days from the date, unless sooner revoked or rendered invalid by operation of rule or law.

Sincerely,

A handwritten signature in black ink, appearing to read "Seana Willing", written in a cursive style.

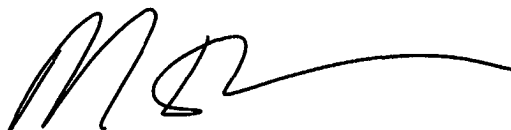
Seana Willing
Chief Disciplinary Counsel
SW/web



CERTIFICATE OF SERVICE

I, the undersigned counsel, certify a copy of the foregoing **PETITION** has been served upon the Illinois Independent Tax Tribunal and on the below-named party by FedEx on June 1, 2021.

Illinois Independent Tax Tribunal 160 N. LaSalle ST. Room N506 Chicago, Illinois 60601 <i>By FedEx</i>	Illinois Department of Revenue Office of Legal Services 100 W. Randolph St., 7-900 (7 th floor of the Thompson Center) Chicago, Illinois 60601 <i>By FedEx</i>
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Michael D. Karson (ARDC No. 6300158)
Telephone: 214.969.2559
Michael.Karson@tklaw.com

COUNSEL TO PETITIONER

THOMPSON & KNIGHT LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201