

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

WASTE MANAGEMENT OF ILLINOIS, INC.,)	
)	
)	
Petitioner,)	Chief Judge James M. Conway
)	
v.)	No. 15-TT-130
)	
THE ILLINOIS DEPARTMENT OF REVENUE,)	
)	
)	
Respondent.)	

**DEPARTMENT OF REVENUE’S MOTION TO DISMISS COUNT IV OF THE WASTE
MANAGEMENT OF ILLINOIS, INC. PETITION (15-TT-130)**

Respondent, the Illinois Department of Revenue (hereafter the “Department”) by its attorneys, Michael Coveny and Seth Schrifman, 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 IV in the Petition of Waste Management of Illinois, Inc. v. The Illinois Department of Revenue, for lack of subject matter jurisdiction. In support of its motion, the Department states as follows:

BACKGROUND

On May 1, 2015 the Department issued thirty-two separate Notices of Tentative Denial of Claim (hereafter “NTDs”) to Waste Management of Illinois, Inc. (hereafter “WMI”) for the monthly periods of February 2012 through September 2014 seeking a total net amount of \$200,012.43. Waste Management NTDs were attached to its Petition (hereafter the “WMI Petition”) as Exhibit A.

§ 2-619 STANDARD

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, 547 N.E.2d 1358 (4th Dist. 1989). The motion admits all facts well pleaded, but not conclusions of law or

conclusions of fact unsupported by allegations of specific facts upon which such conclusions rest. *Moreno v. Joe Perillo Pontiac, Inc.*, 112 Ill.App.3d 670, 676, 445 N.E.2d 1184 (1st Dist 1983). 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, 4 N.E.3d 1126 (2nd Dist. 2014).

TRIBUNAL'S JURISDICTION – APPLICABLE LAW

The Illinois Independent Tax Tribunal Act of 2012 (hereafter the “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).

In regard to fees sought pursuant to the Illinois Administrative Procedure Act, (hereafter, the “APA”), the 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).

The Tax Tribunal Has No Jurisdiction Over Count IV Of The WMI Petition

In Count IV, WMI specifically invoked Section 10-55 of the Illinois Administrative Procedure Act (hereafter the “APA”) in their fee demands. For example, in the preamble or heading to Count IV, WMI states:

Under the Illinois APA, WMI is entitled to an award for WMI's reasonable expenses and attorneys' fees to bring this action to invalidate the Department's rule implemented without following the rulemaking requirements of the Illinois APA, and to invalidate the Department's October 1, 2014 amendment to its Motor Fuel rules, which exceeded the scope of the Illinois MFT.

In its Count IV prayer for relief, WMI seeks a Tribunal order:

[F]inding that, pursuant to the APA, WMI 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 Tax Tribunal determines is appropriate.

WMI Petition, Count IV (emphasis added).

Finally, within Paragraph 78 under Count IV, the WMI Petition states:

Section 10-55(c) of the Illinois APA provides that:

(c) In any case in which a party has an administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees.

5 ILCS 100/10-55(c).

Based on the Act’s explicit exclusion of any claims made under or pursuant to § 10-55 of the APA, Count IV cannot stand. The Act specifically instructs taxpayers to make claims for fees under the APA, first to the Department and then with the Illinois Court of Claims. Therefore, Count IV must be dismissed. This Tribunal has no jurisdiction to entertain or consider the relief sought.

It is axiomatic of course that administrative agencies, even so-called quasi-judicial ones like this Tribunal, do not possess any common law type powers or general jurisdiction that a circuit court exercises or possess. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 130544, ¶ 16, 16 N.E.3d 228 (1st Dist. 2014). Rather they exercise only the powers expressly conferred on them by the Legislature. *Crittenden v. Cook County Com'n of Human Rights*, 2013 IL 114876, ¶ 14, 990 N.E.2d 1161 (2013). In this situation, not only is there no specific grant of authority to award fees pursuant to § 10-55 of the APA, the Act specifically precludes any claim under § 10-55 of the APA. Instead, it directs taxpayers to seek such fees in the Illinois Court of Claims.

Therefore, the Department's Motion to Dismiss WMI Petition Count IV should be granted.

Respectfully Submitted,

By: /s/Michael Coveny
/s/Seth Schriftman

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Dated: July 28, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Notice of Motion and The Illinois Department of Revenue's Motion to Dismiss was served via e-mail on the 28th day of July, 2015 by e-mailing them to Michael J. Wynne at mwynne@reedsmith.com, Adam Beckerink at abeckerink@reedsmith.com, and Jennifer Waryjas at jwaryjas@reedsmith.com.

By: /s/Michael Coveny
/s/Seth Schriftman