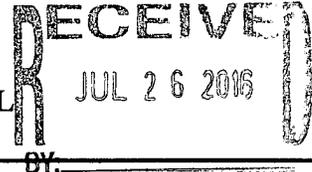


ILLINOIS INDEPENDENT TAX TRIBUNAL



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

**PETITIONER'S RESPONSE TO RESPONDENT'S
CROSS-MOTION FOR SUMMARY JUDGMENT**

I. The Department's *Prima Facie* Case¹

The Government stipulated that Compressed Natural Gas (“CNG”) is not a “liquid” at any time during its production, storage, or use. (Stip. ¶ 22). Statutory rebuttable presumptions are likened to a bubble which bursts upon contact with a contrary fact. *See Diederich v. Walters*, 65 Ill. 2d 95, 102 (1976); *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 462 (1983) (“The prevailing theory regarding presumptions that Illinois follows and *Diederich* speaks about is Thayer’s bursting-bubble hypothesis: once evidence is introduced contrary to the presumption, the bubble bursts and the presumption vanishes.”). Because the definition of “motor fuel” pertains to volatile and inflammable “liquids” and it is a stipulated fact that CNG is not a liquid (Stip. ¶¶ 22–25), in this case the bubble of the presumption of correctness has already burst. Thus, the Department has no *prima facie* case unless the Tax Tribunal determines:

¹ The Government opens its argument with the proposition that “the Department established the *prima facie* correctness of its action when it introduced its Notices into evidence, under the Director’s certification.” (Govt. p. 11). The Department’s Notice of Tax Liability (“NTL”) has not been introduced into evidence as there has been no evidentiary hearing, thus the conditions of Section 6b of the Retailers’ Occupation Tax Act (“ROTA”), incorporated by Section 21 of the Motor Fuel Tax Law (“MFTL”), have not been satisfied for the Department to establish its *prima facie* case and to shift the burden to the Petitioner of going forward with rebuttal evidence. 35 ILCS 120/6b; 35 ILCS 505/21.

(a) that CNG is a liquid, despite a factual stipulation to the contrary, or (b) that the statutory use of the word “liquids” is ambiguous and therefore the Tribunal consults external guidance that persuade it that the term “liquids” was intended to include a non-liquefied natural gas.

II. Statutory Construction

The parties agree that a question of law is presented to the Tribunal. The parties disagree on the scope of the question. Petitioner contends that the scope is the interpretation of the MFTL, without the need to resort to extrinsic sources because no ambiguity is present to justify the Tribunal’s departure from the plain language of the statute. The Government contends there is ambiguity in the plain terms of the MFTL and that the Tribunal must therefore look to external sources of guidance about legislative intent, such as the Government’s regulations for the MFTL and for other tax acts (Govt. pp. 2, 9–10, & 27–32), its advisory rulings (Govt. p. 30), and its intergovernmental agreements (Govt. pp. 7–8).

Whatever the scope, the threshold question is which set of interpretive lenses the Tax Tribunal must wear to view the law: (i) those with a focus biased in favor of the taxpayer and against the Government because there is no exemption at issue, or (ii) those with a focus biased in favor of the Government because there is an exemption at issue. The Government, although it offers the Tax Tribunal a set of lenses with a focus biased in its favor, has failed to identify any provision of the MFTL which it contends is an exemption for CNG. Given that failing, it is appropriate for the Tax Tribunal to use the set of lenses for tax laws not involving an exemption.

A. Threshold Issue: Construction of Tax Laws

Determining whether CNG is outside the scope of the definition of “motor fuel” in the MFTL, and so is not subject to tax in the first instance, is necessarily a precursor to determining

whether, if CNG were within scope, there is another provision of the MFTL that renders it exempt.

If the issue is scope, the government grudgingly acknowledges that any ambiguity in the MFTL must be construed most strictly in favor of the taxpayer and against the government (Govt. pp. 35–37). If the issue is exemption, the construction turns most strictly against the taxpayer and in favor of the government. (Govt. p. 37). The Government conflates scope and exemption in a section of its Cross-Motion titled “The Cannons Of Construction Advanced By WMI Are Misplaced” (Govt. pp. 32–36). However, the Government’s effort reveals that it does not believe it can prevail *unless* the Tribunal *first* finds that an exemption provision is at issue.

The Government asserts that by “stating that ‘taxable fuel is always a liquid’ (S.J. p. 5) WMI is essentially arguing that CNG and any ‘Motor Fuel’ which exists in a gaseous state is *exempt* from taxation under the MFTL.” (Govt. p. 37) (italics in original). The Government immediately bootstraps that mischaracterization of taxpayer’s argument to argue that “[n]otably, Illinois law requires that exemptions from tax – any tax – are to be construed against the exemption and in favor of taxation.” *Id.* (citations omitted). Illinois law states that “[a] marriage between 2 *persons* licensed, solemnized and registered as provided in this Act is valid in this State,” but using the Government’s approach, one could argue that the same law *exempts* a marriage between 2 lions, 2 tigers, or 2 bears, or any combination thereof from those statutory requirements. *See* Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/202. Lions, tigers, and bears are not “persons” and they are therefore outside the scope of the marriage laws, without the necessity of an exemption from such laws. Section 1.1 of the MFTL states that: “‘Motor Fuel’ means all volatile and inflammable *liquids* produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles.” 35 ILCS

505/1.1. CNG is not a “liquid” (Stip. ¶¶ 22, 25). Because CNG is outside the scope of “liquids” that can be “any Motor Fuel” as defined under the MFTL, no exemption provision is necessary to exclude CNG from tax.

The Government does not identify any provision in the MFTL which contains the supposed exemption that the Tribunal must interpret in its favor. Rather, the Government argues that the MFTL provisions – Section 1.1, Section 1.8, Section 1.13, Section 1.19 and Section 5 – taken *together* include CNG. (Govt. pp. 15–23). The General Assembly did not refer to any of those provisions as an exemption. Indeed, not once does the Government mention Section 6 and Section 6a of the MFTL, each of which is referred to in Section 7 of the MFTL as actually containing an applicable “exemption” from the tax. Neither does the Government mention Section 2a of the MFTL to which Section 13.a.8 also actually refers as containing an exemption. The General Assembly used the term “exemption” in the MFTL with reference to specific provisions, none of which are mentioned or relied on by the Government, thus the Tax Tribunal has been offered no reasonable basis to interpret as an exemption those provisions which the General Assembly itself chose not to identify in that fashion.

The General Assembly does not hide elephants in mouseholes, nor does it disguise elephants as mice. *See People ex rel. Ryan v. Agpro, Inc.*, 214 Ill. 2d 222, 228 (2005). The General Assembly did not disguise exemptions as definitional and reporting provisions, nor did it hide exemptions in them. Absent an actual exemption provision at issue, it would be reversible error for the Tribunal to apply a rule of construction that is strictly against the taxpayer and in favor of the government. *See, e.g., People ex rel. Ramey v. Gulf, Mobile & O. R. Co.*, 15 Ill. 2d 126, 129 (1958) (“the rule that tax statutes are to be strictly construed against the government and in favor of the taxpayer is so well settled as to require no citation of authority.”).

B. The MFTL provisions highlighted by the Government are not ambiguous individually or in the context of the entire MFTL.

1. “Among other things . . .”

Section 1.1. of the MFTL provides the following definition:

Sec. 1.1. "Motor Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel" as defined in Section 1.13 of this Act.

35 ILCS 505/1.1. The Government queries how the word “liquids” in the first sentence can prevent the phrase “Among other things” from including CNG. (Govt. p. 14). Indeed, the Government argues that MFTL Section 1.1 together with Section 1.8 (definition of “Gallon”) and Section 5 (distributor reporting) “clearly indicate that CNG is taxable as motor fuel” despite the use of the term “liquid” in Section 1.1. (Govt. p. 14). The Government’s interpretation of the phrase “Among other things” is that it “shows the definition . . . does not include only liquids.” (Govt. p. 15) (emphasis in original). If that is so then the Government must also instruct the Tribunal on what “other things” are not “motor fuel,” since its effort to include CNG as “motor fuel” could also include *solids* like, for example, volatile and inflammable dried bull manure, coal, wood, and legal briefs, “[a]mong other things.”

Under the interpretative maxim *ejusdem generis*, “when a statutory clause specifically describes several classes of persons or things and then includes ‘other persons or things,’ the word ‘other’ is interpreted as meaning ‘other such like.’” *People v. Davis*, 199 Ill. 2d 130, 138 (2002). For example the Supreme Court was tasked with interpreting whether a statute that criminalized the transportation of stolen “motor vehicles” across state lines applied to airplanes. *McBoyle v. United States*, 283 U.S. 25 (1931). The term “motor vehicle” was statutorily defined to “include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-

propelled vehicle not designed for running on rails.” *Id.* at 26. The Court, using *eiusdem generis* reasoning, held that an airplane is sufficiently different from the other enumerated vehicles that it should not be considered a “motor vehicle” for purposes of applying the statute. *Id.*

The Illinois Supreme Court recently invoked *eiusdem generis* to determine that a pellet gun was not a “dangerous weapon” under an Illinois statute. *Davis*, 199 Ill. 2d 130. The statute lists two categories of dangerous weapons: “[I.] a pistol, revolver, rifle, shotgun, spring gun, or any other firearm, sawed-off shotgun, a stun gun or taser . . . knife with a blade of at least 3 inches in length, dagger, dirk, switchblade knife, stiletto, or any other deadly or dangerous weapon or instrument of like nature . . . [or II.] a bludgeon, blackjack, slingshot, sand-bag, sand-club, metal knuckles, billy or other dangerous weapon of like character.” *Id.* at 133 (internal citations omitted). The Court held that because other Illinois statutes distinguished between firearms and pellet guns, pellet guns were not “firearms.” *Id.* at 136–37. Moreover, the Court held that under *eiusdem generis*, a pellet gun was not sufficiently like a knife or bludgeon to be lumped in with the other enumerated weapons. Therefore, pellet guns are not “dangerous weapons” under the statute. *Id.* at 137–42.

Applying *eiusdem generis* to the Government’s proposed interpretation renders it unreasonable. When the MFTL is limited to liquids and Special fuels (which include only liquids), among other things, the “other things” referred to must be similar to the enumerated items—in this case, the “other things” must be liquids. Just like airplanes are not “motor vehicles” and pellet guns are not “dangerous weapons,” CNG is not a “motor fuel” under the MFTL because CNG is not a liquid like the other taxable motor fuels.

2. MFTL Section 5

If the phrase “Among other things” truly meant what the Government claims, there would be no need for the Government to make an expansive argument under Section 5 of the MFTL to introduce CNG as a motor fuel under a tax reporting section. This assertion undermines its expansive reading of “Among other things” in Section 1.1 of the MFTL.

The first paragraph of Section 5 provides that “a person holding a valid unrevoked license to act as a distributor of motor fuel shall . . . make return to the Department, showing an itemized statement of the number of invoiced gallons of motor fuel of the types specified in this Section which were purchased, acquired, received, or exported during the preceding calendar month.” 35 ILCS 505/5. The first paragraph *already* pertains to persons who distribute “motor fuel” as defined by preceding sections of the MFTL, which up to that point includes only “liquids,” but regardless, it is the second paragraph of Section 5 which the Government contends adds to the definition of “motor fuel” and is inclusive of CNG as a taxable item.

The second paragraph of Section 5 reads, in part: “The types of *motor fuel* referred to in the preceding paragraph are: . . . (B) all combustible gases which exist in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute *including, but not limited to, liquefied* petroleum gases used for highway purposes.” *Id.* (italics added). The problem the Government encounters with the quoted sentence is that it too pertains to “types of motor fuel,” a term already expressly defined in Section 1.1 by reference to “liquids.” Unsurprisingly, a later phrase in the same sentence clarifies that clause (B) should be read as “including, but not limited to, *liquefied* petroleum gases.” *Id.* (emphasis added). As the Stipulation establishes at ¶ 22, CNG is not a liquid at any point in its storage and use, so it cannot ever be the type of gas that can be liquefied and reported as motor fuel pursuant to Section 5 of the MFTL (and excluded

from treatment as a “Special Fuel” under Section 1.13). Thus, Section 5 introduces no ambiguity in the definition of “motor fuel” which the Government can use to escape the plain meaning of the definitional sections of the MFTL.

Petitioner has not contended that CNG is the only combustible gas which exists in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute pressure, nor is there a Stipulation to that effect. Regardless, whether it is only CNG or another set of petroleum gases which fits those parameters, the only gasses included as a *reportable* motor fuel must be “liquefied.” Given that both Section 1.1 and Section 5 rely on the synonymous terms “liquids” and “liquefied” to define the scope of taxation and of reporting, there is no ambiguity in reading them together to exclude a gas that never becomes liquefied in its production, storage and use.²

3. “Gallon”

The term “gallon” defined in Section 1.8 of the MFTL also does not introduce any ambiguity to the definition of “motor fuel.” The term “gallon” in the MFTL “means, in addition to its ordinary meaning, its equivalent in a capacity of measurement of substance in a gaseous state.” 35 ILCS 505/1.18. The tax under the MFTL is imposed on “motor fuel” on a “per gallon” basis. 35 ILCS 505/2 & 2a. Therefore, a “gallon” definition is intended to be applied to a “motor fuel” which is, by definition, a liquid, including liquefied natural gas. The definition of a “gallon” does not itself create any ambiguity regarding a non-liquefied gas that is not included in the definition of a “motor fuel.”

²That CNG is reported on some Department forms is an extraneous Department-created fact that does not evidence ambiguity in the statutory language. That fact may be evidence of how the Department misinterpreted the impact of IFTA on its administration of the MFTL

4. In aggregate

Sec. 1.1. "Motor Fuel" means all volatile and inflammable *liquids* produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles.

35 ILCS 505/1.1 (emphasis added). The following sentence in the same paragraph reads:

"Among other things, a 'Motor Fuel' includes 'Special Fuel' as defined in Section 1.13 of this Act," but that cannot be read to justify ignoring, by rendering it meaningless surplus, the word "liquids" in the preceding sentence. *See Caveney v. Bower*, 207 Ill. 2d 82, 90 (2003) (courts avoid interpretations that render statutory language as mere surplusage); *Hazelton v. Zoning Bd.*, 48 Ill. App. 3d 348, 354 (1st Dist. 1977) ("a presumption of surplusage is impermissible under the traditional rules of statutory construction."). No interpretation of sections 1.8, 1.13 and 5 can be offered as reasonable which renders the term "liquids" superfluous.

The Government finds the aggregate clarity of these sections inescapable, since in footnote no. 9 the Government asserts that "the insertion of the word 'liquids' as opposed to a word such as 'substances' was clearly an oversight" based solely on the Government's view of what the intent of the legislature was – "to tax motor fuel used for motor vehicles used on public highways." (Govt. p. 14, fn. 9 & p. 19, fn. 11). Given that the word "liquids" is original to the March 28, 1929 version of the MFTL, and it has not been "corrected" by the General Assembly in eighty-seven years, that is quite an oversight to ask the Tax Tribunal to interpret away. Given that the Department argues its regulations including CNG in motor fuel are longstanding (1995) and thus deserving of deference, the presence of the word "liquids" is even more longstanding and, coming from the General Assembly, entitled to more deference than the Department's regulations. That is especially so when one considers the General Assembly acted comprehensively in 1995 to amend the MFTL to accommodate the membership of Illinois in the

International Fuel Tax Agreement (“IFTA”). P.A. 88-480, eff. Jan. 1, 1995. The IFTA is a reporting agreement rather than a taxing agreement, and it respects the sovereignty of the member-States, so membership in the IFTA would not have expanded the scope of taxable motor fuels under the MFTL without specific action of the General Assembly.

Moreover, the Government’s offered solution – to interpret “liquids” as “substances” contains its own oversight. The common dictionary definition of “substance” includes such descriptions as “physical material from which something is made or which has discrete existence” and “matter of particular or definite chemical constitution.” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1995), p. 1174. The Government states that “[l]ogically, *all motor fuel* would include substances, whether in a liquid or gaseous state as long as the vehicles using those substances are 1) not specifically excluded by the MFTL, or 2) not used on public highways.” (Govt. Mot. pp. 18–19) (italics in original).

Once again, the Government ignores solids, *e.g.*, dried bull manure, coal, wood and legal briefs for instance, and argues that instead of excluding a given substance from taxation, the taxability of the substance as “motor fuel” is determined by whether the “vehicle” in which the substance is contained is excluded from the MFTL, or whether the vehicle is not used on public roads. That is an entirely different law – one the legislature did not enact. Such a vehicle-centric interpretation renders any definition of a “motor fuel” already in the MFTL as surplusage, whether in Section 1.1 or in the aggregate of sections the Government relies upon.

For eighty-seven years the term “motor fuel” in the MFTL has been limited to “liquids.” CNG is not a liquid and it is therefore not “motor fuel” taxable under the MFTL.

III. Interpretive Sources Outside the MFTL Do Not Benefit the Government.

Because there is no ambiguity in the statutory terms, and thus no need to refer to extraneous sources of guidance, the Government tries to suggest ambiguity from the fact that its own regulations have for a long time have provided for some treatment of CNG. The Government claims, given the longevity of its regulations, that its regulations deserve this Tribunal's deference. (Govt. p. 29–32).

The Government states that “the Department’s MFTL regulation, 86 Ill. Admin. Code § 500.335(f), has been in effect since 1995” and thus that the “inclusion of CNG is also due a high level of deference in determining the long-standing MFTL provisions at issue.” (Govt. p. 24). Section 500.335(f) states that “CNG is taxable under the MFTL” (Govt. p. 29), and also that “[f]or carriers registered under the IFTA which consume compressed natural gas and other fuels that cannot be measured in gallons” the regulation provides a conversion factor. *Id.*

IFTA registration is only required by the IFTA and Illinois for carriers engaged in commercial travel over state lines. IFTA, Art. III, R305. The Department’s regulation is therefore inapplicable by its own terms to taxpayers subject to the MFTL that are engaged solely in *intra*-state travel, whether for personal or commercial reason. Notably when making a regulation and IFTA-based argument at pages 29–30, the Government cannot bring itself to say more than “an MFTL regulation has incorporated and *contemplated* the taxability of CNG since 1995” and “the MFTL *contemplated* CNG being taxable.” (Govt. p. 30) (italics added). Many things are contemplated by the General Assembly, but few are actually enacted. A statute with the word “liquids” is what the General Assembly enacted.

Although the Government claims that “the Department has not and is not making the argument that merely because Illinois is a member of IFTA, CNG is taxable” – which is to be

expected for that would be an unlawful delegation of State sovereignty – it is undeniable that Illinois joined IFTA in 1994 and in February of 1995 the Department adopted the regulation that it claims is entitled to deference to interpret the MFTL. The very paragraph of its regulations that the Government quotes begins with “[f]or carriers registered under IFTA . . .” (Govt. p. 9). The regulation offers no support for taxing CNG used for *intra*-state transportation, whether commercial or otherwise. The MFTL makes no distinction in the definition of “Motor fuel” between *intra*-state and *inter*-state transportation usage. A regulation that demonstrably implements a classification – a distinction between *intra*-state and *inter*-state highway travel – which is not found in the statute it purports to administer is entitled to no deference.

Perhaps realizing that IFTA cannot support its argument, the Department points out that “the Department’s *contemplation* that CNG has clearly been taxable under the MFTL was expressed in Information Bulletins dating to 1984,” echoing letter ruling ST-83-0718 from August 31, 1983. (Govt. p. 30) (*italics added*). But informal guidance does not have the force of law and the Department did not provide a legal basis for its contemplation. In fact, the letter lacks citation to any provision of the MFTL to support that position. (Govt. Ex. 5). “Contemplation” is not legal analysis.³

One can surmise the source of the contemplative error from the Government’s citation in its Cross-Motion of regulations under the Retailers’ Occupation Tax Act. (Govt. p. 26). The Government says that “[d]uring the periods at issue, there was in effect under the ROTA which defines “Motor Fuel” for purposes of ROTA Taxability,” citing 86 Ill. Admin. Code § 130.101(b)(2)(C). However, for purposes of the ROTA the only determinative characteristic of the item sold that matters is whether the item is “tangible personal property.”

³ The Department itself doesn’t follow its own private letter rulings for longer than 10 years. 2 Ill. Admin. Code § 1200.110(e). Thus the 23 year-old ruling offered to the Tax Tribunal is already moot.

There is no question that CNG is tangible personal property and so CNG is subject to the ROTA if transferred in a sale at retail by a retailer, for use or consumption by the purchaser, whether for travel on the highways or for other non-transportation uses, and not purchased for resale. However, because CNG is not a liquid, it is not “motor fuel” for purposes of the MFTL and is not taxable under the MFTL. Contrary to what the Government contends, the ROTA and the MFTL should not be read *in pari materia* because they tax different things. The ROTA deals with tangible personal property sold for any use or consumption. A subset of tangible personal property is “liquids,” and a subset of liquids – those which are volatile and inflammable – are subject to the MFTL when used for specific purpose of powering a motor vehicle for travel on the State’s highways. The definition of “Motor Fuel” was expanded in the Department’s ROTA regulations to capture tangible personal property not in liquid form (*i.e.*, excluded by the MFTL), but the ROTA itself does not provide its own definition of “motor fuel.” There is no reason to have such a definition. The ROTA and the MFTL are not *in pari materia* in defining the scope of their application.

The Government claims its own regulations under the MFTL and the ROTA (which is not at issue here) require that “Petitioner must show that such a regulation is clearly arbitrary, capricious, and unreasonable.” (Govt. p. 27). That is so only if the Government’s regulation are applicable in the first instance. The MFTL regulations are not applicable to a sale of volatile and inflammable gasses that are not “liquids,” and the ROTA regulations are not applicable to define the scope of the MFTL. The Government already concedes that CNG is never a liquid, and, there being no exemption provision in the MFTL brought to the Tax Tribunal’s attention, the burden is entirely on the Government to show the ambiguity in the term “liquids” that should persuade the Tax Tribunal to consult any Department regulation. There is no such ambiguity.

IV. The Government Misunderstands Count III

The Government asks the Tax Tribunal to rule in its favor on Count III, mischaracterizing Petitioner's claim by stating that "WMI asserts that the Department's statements of denial were 'Rules' under the APA and are not enforceable because these statements were not subject to public inspection." (Govt. p. 46). Petitioner is not arguing that the Notices of Tax Liability are "rules," rather the basis stated in the Notice of Tax Liability for denying Petitioner's claims for refund is a rule. Specifically, the Government stated: "You have been informed that CNG used for highway purposes is taxable and has always been taxable." (Stip. Ex. A). There is, to date, no regulation that states that CNG is a "motor fuel" as defined in the MFTL. There was no regulation stating that CNG was even reportable as a "motor fuel" – even though it was not a motor fuel under the MFTL itself – until 1995. Thus, the basis for denying Petitioner's claims for refund was the Department's policy position of general applicability that CNG "has always been taxable" when in fact no regulation so provided. The NTL's merely apply that policy position of general applicability to a particular taxpayer, and that is what renders the NTL's invalid since they enforce a policy position never adopted by regulation and which, even if adopted, is directly contrary to the statute such a regulation would administer.

V. Conclusion

Taxes are creatures of statute, rather than a product of the common law. Consequently, all persons, things, and activities are non-taxable until the legislature makes any one or more of them specifically taxable. Having done so, the legislature can then exempt certain things it has first declared to be taxable. Because CNG is not a liquid, it cannot be a taxable "motor fuel" under the MFTL. Because there is no statutory exemption at issue, the MFTL must be

interpreted in the light most favorable to the taxpayer. The plausible interpretation which is most favorable to Petitioner is that CNG is not a taxable motor fuel.

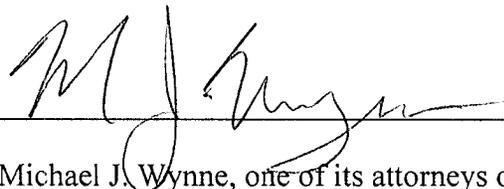
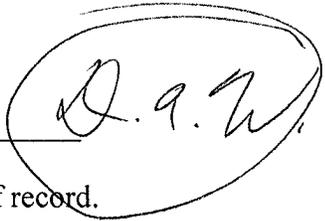
Taxable fuels under the MFTL are limited to liquids (including “Special fuels,” all of which are liquids), “among other things.” Longstanding principles of statutory interpretation require that such provisions be interpreted as “among other *like* things.” CNG is not like liquids such as gasoline. The General Assembly has had ample opportunity to amend the MFTL to make CNG taxable, but it has not done so. The Department cannot act as a *quasi*-legislature and unilaterally extend the scope of the MFTL, by informal rulings, forms, or regulations. Just as title to stolen property never vests in the thief, a regulation that usurps legislative authority and attempts to make taxable that which the General Assembly did not include in the scope of taxation does not become vested by time with any degree of deference sufficient to effectively amend the statute. The concept of squatter’s rights or adverse possession does not apply to save regulations that exceed the scope of the statute they purport to interpret.

Finally, the government’s informal adoption and execution of a generally applicable rule (“CNG used for highway purposes is taxable and has always been taxable”) violates the Illinois APA because there was no promulgation of a regulation imposing tax upon CNG (as opposed to reporting requirements), and that regulation itself was not adopted until 1995, yet the Department claims it has always been taxable (apparently since 1929 when the MFTL was enacted).

Respectfully submitted,

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