

**IN THE ILLINOIS
INDEPENDENT TAX TRIBUNAL
COOK COUNTY, ILLINOIS**

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

PETITIONER’S MOTION FOR SUMMARY JUDGMENT

Petitioner, Waste Management of Illinois, Inc. (“Waste Management”), by and through its attorneys, Reed Smith LLP, files this motion for summary judgment in its favor and against the Respondent, the Illinois Department of Revenue (the “Department”) on Counts I, II, and III of its Petition, pursuant to 735 ILCS 5/2-1005. In support of its Motion, Petitioner submits the attached Memorandum of Law with exhibits, and states as follows:

1. Summary judgment should be granted “if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c). There is no genuine issue of material fact in this case; the controversy is purely an exercise in statutory interpretation. The issue is whether the Motor Fuel Tax Law levies a tax upon compressed natural gas.

2. The parties have stipulated that compressed natural gas is not a liquid. The Motor Fuel Tax Law, by the plain language in the statute, applies only to liquids. Therefore, compressed natural gas is not subject to Motor Fuel Tax under the Motor Fuel Tax Law. This conclusion is supported by various canons of statutory interpretation.

3. Waste Management argues that the Motor Fuel Tax Law unambiguously fails to levy a tax on compressed natural gas. If some ambiguity exists, however, this being a tax statute, it must be construed against the government. *See, e.g., Quad Cities Open, Inc. v. Silvis*, 208 Ill.2d 498, 508 (2004) (“taxing laws are to be strictly construed and they are not to be extended beyond the clear import of the language used. If there is any doubt in their application they will be construed most strongly against the government and in favor of the taxpayer.”) (internal quotations omitted). Therefore, assuming *arguendo* there is some ambiguity, the Motor Fuel Tax Law must be construed strongly against the Department and in favor of Waste Management.

4. The Department’s recently amended regulations which purport to impose the Motor Fuel Tax upon compressed natural gas violate administrative law principles by impermissibly extending the applicability of the Motor Fuel Tax Law instead of administering and executing the law as written. The Department’s actions also represent a usurpation of the legislative function of the General Assembly, and therefore, violate Article II, Section 1 and Article IX, Section 1 of the Illinois Constitution of 1970.

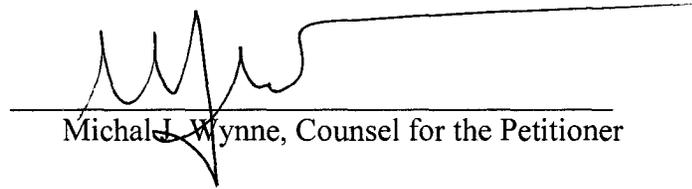
5. Finally, the Department’s informal policy that subjected Waste Management’s compressed natural gas to Motor Fuel Tax violated the Illinois Administrative Procedure Act. The Department’s informal policy qualifies as a “rule” under the Illinois Administrative Procedure Act, and because the Department did not follow all of the proper procedures for implementing such a rule, the rule is therefore invalid.

Dated: May 2, 2016

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By:



Michael J. Wynne, Counsel for the Petitioner