

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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

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**ANSWER**

Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorneys, Michael Coveny and Seth Schriftman, Special Assistant Attorney Generals of the State of Illinois, answers the Petitioner’s Petition (the “Petition”) as follows:

**Jurisdiction and Venue**

1. The Tax Tribunal has jurisdiction over this petition because this timely petition involves thirty-two Notice of Tentative Denial of Claim ("NTD") forms (attached as **Exhibit A**) issued, in an aggregate amount in excess of \$15,000.00, denying thirty-two claims for refund under a tax law identified in Section 1-45 of the Tax Tribunal Act; therefore, the Tax Tribunal has jurisdiction over this petition.

**ANSWER:** The Department admits jurisdiction of the Tax Tribunal and to the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibit A and states such documents speak for themselves.

2. WMI accepts the Tax Tribunal's designation of its office in Cook County to conduct the hearing in this matter.

**ANSWER:** The Department admits the allegations contained in Paragraph 2 for Waste Management of Illinois, Inc. (“WMI”).

**Facts Common to all Counts**

***The Parties***

3. WMI is a Delaware corporation, with headquarters in Texas, holding a certificate of authority to transact business in Illinois and it is in good standing with the Illinois Secretary of State.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 3.

4. The Illinois Department of Revenue is an executive agency authorized, among other functions, to administer and enforce the provisions of the Illinois Retailers' Occupation Tax Act and the Illinois Use Tax Act. 20 ILCS 2505/2505-25; 20 ILCS 2505/2505-90.

**ANSWER:** The Department admits the allegations contained in Paragraph 4.

***WMI's Operations in Illinois***

5. WMI is engaged in waste and sanitation services within Illinois.

**ANSWER:** The Department admits the allegations contained in Paragraph 5.

6. WMI's services include waste collection, transfer, recycling and resource recovery, and disposal services.

**ANSWER:** The Department admits the allegations contained in Paragraph 6.

7. WMI was engaged in these services in Illinois during the taxable periods at issue in this petition.

**ANSWER:** The Department admits the allegations contained in Paragraph 7.

8. WMI utilizes motor vehicles in the performance of its services.

**ANSWER:** The Department admits the allegations contained in Paragraph 8.

9. Some WMI vehicles operate using diesel fuel ("diesel").

**ANSWER:** The Department admits the allegations contained in Paragraph 9.

10. Some WMI vehicles operate using compressed natural gas ("CNG").

**ANSWER:** The Department admits the allegations contained in Paragraph 10.

11. WMI operates natural gas compression and fueling stations at two locations in Illinois, at which its CNG vehicles are refueled through a "slow-fill" process.

**ANSWER:** The Department admits the allegations contained in Paragraph 11.

12. WMI also operates a retail station at which non-WMI vehicles that use CNG may purchase CNG to refuel their vehicles using a "fast-fill" process.

**ANSWER:** The Department admits the allegations contained in Paragraph 12.

13. WMI's retail station is operated by a third-party which purchases CNG from WMI for resale to non-WMI purchasers.

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 13.

### ***Compressed Natural Gas***

14. Natural gas is found in deep underground rock formations on its own or often in proximity to or associated with other hydrocarbon reservoirs, such as coal beds or petroleum deposits.

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 14.

15. Natural gas is composed primarily of methane, but before natural gas can be used as a fuel it must be processed to remove water and other natural gas liquids ("NGLs") and impurities and thus meet the specifications of marketable natural gas.

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 15.

16. Natural gas and NGLs are transported by separate pipeline systems. Natural gas pipelines utilize compressor stations at specified intervals to pressurize the system and

keep the natural gas flowing.

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 16.

17. WMI purchases natural gas from a local gas supplier which is delivered to WMI via a pipeline.

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 17.

18. WMI then uses compressors to compress the natural gas from 14.7 pounds per square inch ("psi") (atmospheric pressure at sea level) to 3,600 psi for storage as CNG, at approximately less than 1% of the volume it had at atmospheric pressure.

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 18.

19. CNG is flammable within a narrow range, requiring a high ignition temperature of 1,200 degrees Fahrenheit, as compared to gasoline which requires a temperature of 600 degrees Fahrenheit.

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 19.

20. CNG is a very safe fuel source because natural gas is lighter than air, so CNG discharged from storage dissipates very quickly when released into the air without pooling as a liquid or a vapor.

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 20.

21. CNG flows from storage through a dispenser into high-pressure cylinders located on the vehicle. When the vehicle accelerates, CNG leaves this on-board storage cylinder, passes along a line to the engine compartment where it flows through a regulator which reduces the pressure from as high as 3,600 psi down to atmospheric pressure, and into a gas mixer

or fuel injectors where it is mixed with air and enters an engine's combustion chambers

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 21.

22. Prior to compression, natural gas is not a liquid at 14.7 pounds per square inch (atmospheric pressure at sea level), and it does not become liquid at any point when compressed, stored as CNG, and used in combustion. To be a liquid, natural gas would have to be condensed at close to atmospheric pressure by cooling it to approximately negative (-) 260 degrees Fahrenheit, and it would be required to be transported under 4 pounds per square inch of pressure at a volume about 1/600th the volume of its gaseous state.

**ANSWER:** The Department is without sufficient information and knowledge to either admit or deny the factual allegations contained within Paragraph 22.

### ***The Illinois Motor Fuel Tax Law and Definitions***

23. Section 2 of the Illinois Motor Fuel Tax Law ("MFT") imposes a tax on "all motor fuel used in motor vehicles operating on the public highways ... of this State." 35 ILCS 505/2.

**ANSWER:** The Department admits the existence, force and effect of the statutory provision set forth or referred to in Paragraph 23 and states such provision speaks for itself.

24. Section 1.1 of the Illinois MFT defines "motor fuel" as follows:

"Motor Fuel" means all volatile and inflammable *liquids* produced, blended or compounded for the purpose of, or which are suitable and 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 (emphasis added).

**ANSWER:** The Department admits the existence, force and effect of the statutory provision set forth or referred to in Paragraph 24 and states such provision speaks for itself.

25. Section 1.13 of the Illinois MFT defines "special fuel" as follows:

"Special Fuel" means all volatile and inflammable *liquids* capable of being used in the generation of power in an internal combustion engine *except that it does not include* gasoline as defined in Section 5, example (A), of this Act, or *combustible gases as defined in Section 5, example (B)*, of this Act. "Special Fuel" includes diesel fuel...

35 ILCS 505/1.13 (emphasis added).

**ANSWER:** The Department admits the existence, force and effect of the statutory provision excerpt set forth or referred to in Paragraph 25 and states such provision excerpt speaks for itself.

26. Section 5 of the Illinois MFT applies to a licensed "distributor of motor fuel" who is required to make a return to the department, of the "number of invoice gallons of motor fuel of the type described in this Section" which are "produced, refined, compounded, manufactured, blended, sold, distributed, exported, and used by the licensed distributor," of the "amount of such motor fuel lost or destroyed during the preceding calendar month" and of the "amount of motor fuel on hand at the close of business for such month." Section 5 then specifies that "[t]he types of motor fuel referred to in the preceding paragraph are: (A) All products commonly or commercially known as gasoline (including casing-head and absorption or natural gasoline), gasohol, motor benzol or motor benzene regardless of their classification or uses; and (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; and (C) special fuel." 35 ILCS 505/5.

**ANSWER:** The Department admits the existence, force and effect of the statutory provision excerpts set forth or referred to in Paragraph 26 and states such provision excerpt speaks for itself. The Department adds that the quoted excerpts contain some slight errors in transcription.

*The Controversy*

Illinois Department of Revenue Rulemaking

27. On October 14, 2014, the Illinois Department of Revenue (the "Department") amended its Motor Fuel Tax regulations, stating the purpose of its amendment to be as follows:

Summary and Purpose of Rulemaking: This rulemaking amends provisions in Part 500 (Motor Fuel Tax) to establish a formula that accurately converts cubic feet or pounds of compressed natural gas (CNG) to gallons for purposes of calculating motor fuel tax/motor fuel use tax. Motor Fuel tax is calculated on a per gallon basis. The need for this rulemaking arises because CNG is not sold on a per gallon basis; instead, it is sold at an established price per cubic foot or pound. It is necessary to provide taxpayers with this conversion factor for use by the International Fuel Tax Agreement; those standards are also generally accepted for use by industry and government.

38 Ill. Reg. 18586-7, Sept. 5, 2014. That summary described the following two additions to sections 500.100 and 500.200 of the Department's Motor Fuel Tax regulations:

**Section 500.100 Definitions.**

For purposes of this Part, the following definitions apply:

\* \* \*

"Gallon" means, in addition to its ordinary meaning, its equivalent in a capacity of (measurement of substance in a gaseous state (Section 1.8 of the Law). For purposes of this Part, a gallon is equal to a liquid measurement of 4 quarts or 3.785 liters.

**Section 500.200 Basis and Rate of the Motor Fuel Tax**

\* \* \*

(c) Compressed natural gas is subject to tax at the rate established in subsection (a)(1). However, because compressed natural gas cannot be measured in gallons it must be converted to gallons using a conversion factor. For purposes of calculating tax under the Motor Fuel Tax Law, a gallon of compressed natural gas means a quantity of compressed natural gas equal to 126.67 cubic feet of natural gas at 60 degrees Fahrenheit and one atmosphere of pressure. In the alternative, it means a quantity of

compressed natural gas that weighs 5.66 pounds.

**ANSWER:** The Department admits the existence, force and effect of the Illinois Register and statutory provisions excerpts set forth or referred to in Paragraph 27 and states such provisions speak for themselves. The Department adds that the quoted excerpts in the Illinois Register contains some slight errors in transcription. The last sentences should state: "It is necessary to provide taxpayers with a conversion factor so that tax can be properly applied. These changes incorporate the standards adopted for use by the International Fuel Tax Agreement; those standards are also generally accepted for use by industry and government." The Department also denies that these referenced regulations were amended on October 14, 2014, as the Illinois Register states the date as August 21, 2014.

28. Neither the Department's "Purpose of Rulemaking," nor the actual amendments, make any reference to a legislative amendment to the Illinois Motor Fuel Tax Law enacted by the General Assembly and signed into law by the Governor in connection with the Department's first regulatory mention of "compressed natural gas" since the enactment of the Illinois MFT.

**ANSWER:** The Department states that Paragraph 28 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. Further, the Department affirmatively states that since 1995 a Motor Fuel Tax regulation discussed CNG. Since that time, this regulation has been amended to dictate the CNG conversion factor. See 86 Ill. Adm. Code § 500.335(f) and 86 Ill. Adm. Code § 500.200(c).

Illinois MFT and the International Fuel Tax Agreement ("IFTA ")

29. Section 14a of the Illinois MFT provides, in part, that:

\* \* \*

The Department may enter the International Fuel Tax Agreement or other cooperative compacts or agreements with other states or jurisdictions to permit base state or base jurisdiction licensing of persons using motor fuel in this State. Those agreements may provide for the cooperation and assistance among member states in the administration and collection of motor fuel tax, including, but not limited to, exchanges of information, auditing and assessing of interstate carriers and suppliers, and any other activities necessary to further uniformity.

35 ILCS 505/14a (emphasis added).

**ANSWER:** The Department admits the existence, force and effect of the statutory provision excerpt set forth or referred to in Paragraph 29 and states such provision excerpt speaks for itself.

30. Section 14a of the Illinois MFT further provides, in part, that:

Pursuant to federal mandate, upon membership in the International Fuel Tax Agreement ("Agreement"), the motor fuel tax imposed upon Commercial Motor Vehicles required to be registered under the terms of the Agreement shall be administered according to the terms of the Agreement, as now or hereafter amended. Illinois shall not establish, maintain, or enforce any law or regulation that has fuel use tax reporting requirements or that provides for payment of a fuel use tax, unless that law or regulation is in conformity with the Agreement.

35 ILCS 505/14a (emphasis added).

**ANSWER:** The Department admits the existence, force and effect of the statutory provision excerpt set forth or referred to in Paragraph 30 and states such provision excerpt speaks for itself.

*The IFTA and the Intermodal Surface Transportation Efficiency Act of 1991*

31. The IFTA grew out of a 1983 three-state agreement which was recommended in 1987 by the National Governors Association ("NGA") to be adopted as a model international fuel tax agreement, and had grown to 16 state members of the United States by 1990.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 31.

32. In 1991, the United States Congress enacted the Intermodal Surface Transportation Efficiency Act ("ISTEA") [49 U.S.C. §§ 31701-31707] which, among other things: (i) adopted and authorized the IFTA recommended by the NGA for collection and distribution of fuel use taxes paid by motor carriers; (ii) funded a working group to assist implementation of IFTA and the International Registration Plan; (iii) set a deadline of September 30, 1996, for the 48 contiguous states of the United States and the District of Columbia to become members; and (ii) allowed exceptions for Alaska and Hawaii as

non-contiguous states, and for Maine, New Hampshire and Vermont because of their membership in a Regional Fuel Tax Agreement.

**ANSWER:** The Department states that Paragraph 32 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of the statutory provision set forth or referred to in Paragraph 32 and states such provision speaks for itself.

33. Also in 1991, the members of the IFTA formed the International Fuel Tax Association, Inc. ("IFTA, Inc."), as the administrative body for the IFTA.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 33.

34. By 1996 the full membership of the IFTA consisted, as it does now, of 48 state members of the United States, including the State of Illinois, and 10 Canadian provinces.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 34.

35. An IFTA applicant state, in addition to agreeing to abide by the IFTA, and the Procedures and Audit Manual of IFTA, Inc., must also provide and adopt resolution which requires, among other requirements, "a copy of the enabling statute authorizing the jurisdiction to enter and abide by the obligations of the Agreement" and "a statement of taxable fuels and tax rates for these fuels." IFTA, Article XV, R1510, and R. 1515.100 and R. 1515.200.

**ANSWER:** The Department states that Paragraph 35 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. Otherwise, the Department admits the existence, force and effect of the IFTA provisions cited in Paragraph 35 and states such provisions speak for themselves.

36. The IFTA is a tax collection agreement, which provides for uniform administration of motor fuel laws regarding motor vehicles that operate in more than one member

jurisdiction by implementing "three core provisions that, as and between the states of the United States, constitute an interstate compact approved by Congress in the Intermodal Surface Transportation Efficiency Act of 1991." IFTA, Article I, R. 130.100.

**ANSWER:** The Department admits the existence, force and effect of the IFTA provision cited in Paragraph 36 and states such provision speaks for itself.

37. The three core provisions of the IFTA that implement the interstate compact are:

.005 The base jurisdiction concept, which allows a licensee to report and to pay motor fuel taxes to a base jurisdiction for distribution to other member jurisdictions in which the licensee traveled and incurred motor fuel use tax liability.

.010 *Retention of each jurisdiction's sovereign authority to determine tax rates, exemptions and exercise other substantive tax authority.*

.015 *A uniform definition of the vehicles* to which the Agreement applies.

IFTA, Article I, R. 130.100.005, 130.100.010, and 130.100.015 (emphasis added).

**ANSWER:** The Department states that Paragraph 37 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. Otherwise, the Department admits the existence, force and effect of the IFTA provisions cited in Paragraph 37 and states such provisions speak for themselves.

38. The IFTA does not define the term "fuel."

**ANSWER:** The Department admits the existence, force and effect of the IFTA and states that the IFTA speaks for itself.

39. The IFTA defines "Motor Fuels" as "all fuels placed in the supply tank of qualified motor vehicles." IFTA, Article II, R. 239.

**ANSWER:** The Department admits the existence, force and effect of the IFTA provision cited in Paragraph 39 and states such provision speaks for itself.

40. A "qualified motor vehicle" is "a motor vehicle used, designed, or maintained for the transportation of persons or property" and that has the requisite number of axles and corresponding gross vehicle weight specified in the IFTA.

**ANSWER:** The Department admits the existence, force and effect of the IFTA provisions cited in Paragraph 40 and states such provisions speaks for themselves.

41. The IFTA provides that "All motor fuel that is normally subject to consumption tax is taxable unless proof to the contrary is provided by the Licensee" but that "The licensee must report all fuel placed in the supply tax of a qualified motor vehicle as taxable on the tax return." IFTA, Article II, R. 820.

**ANSWER:** The Department states that this text is misquoted. The correct text states: "All motor fuel acquired that is normally subject to consumption tax is taxable unless proof to the contrary is provided by the licensee. The licensee must report all fuel placed in the supply tank of a qualified motor vehicle as taxable on the tax return." Otherwise, the Department admits the existence, force and effect of the IFTA provision cited in Paragraph 41 and states such provision speaks for itself.

42. The IFTA provides that "Fuel use defined as exempt by a particular jurisdiction must be reported under this Agreement" and that "Licensees must submit claims for refund for tax paid on tax-exempt fuel directly to the respective jurisdiction." IFTA, Article II, R. 830.200, and R. 830.300.

**ANSWER:** The Department admits the existence, force and effect of the IFTA provision excerpts cited in Paragraph 42 and states such provision excerpts speaks for themselves.

43. Under the IFTA, "timely filing of the tax return and the payment of taxes due to the base jurisdiction for all member jurisdictions discharges the responsibility of the licensee for filing of tax returns and payment of individual taxes to all member jurisdictions." Article IX, R. 920.

**ANSWER:** The Department admits the existence, force and effect of the IFTA provision excerpts cited in Paragraph 43 and states such provision excerpts speaks for themselves.

*WMI's claims for refund and the Department's response*

44. The Department has no tax return forms with which to report CNG usage.

**ANSWER:** Denied. CNG usage could be reported on a form RMFT-71 for the February 2012 through September 2014 time period. The Petitioner had filed such forms in the past.

45. WMI reported its CNG usage on Department Forms "RMFT-71 Liquefied Petroleum Gas Tax Return" for the tax periods February 2012 through September 2014.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 45.

46. In November of 2014, WMI requested a Private Letter Ruling ("PLR") from the Department as to the taxability of CNG under the Illinois MFT, pursuant to the Department's PLR regulation. 2 Ill. Admin. Code § 1200.110.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 46.

47. Specifically, WMI requested that the Department issue a PLR confirming the following conclusion: That compressed natural gas (CNG) does not fall within the definition of motor fuel, special fuel, or fuel under the Illinois Motor Fuel Tax Law Act and, therefore, is not taxable under such Act.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 47.

48. When it became apparent to WMI that the Department and WMI did not agree on the Taxability of CNG under the Illinois MFT, WMI withdrew its request for a PLR.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 48.

49. On April 2, 2015, WMI submitted a claim for refund of Illinois MFT paid on its use of CNG for each tax period from February of 2012 through September of 2014, on the basis that CNG does not fall within the definition of motor fuel, special fuel, or fuel under the Illinois Motor Fuel Tax Law Act and, therefore, is not taxable under such Act.

**ANSWER:** The Department denies that on April 2, 2015, WMI submitted a claim for refund of Illinois MFT paid on its use of CNG for each tax period from February 2012 through September of 2014, as it was a claim for credit. Otherwise, the Department is without sufficient knowledge and information to either admit or deny the other factual allegations contained within Paragraph 49.

50. On May 1, 2015, the Department issued a Notices of Tentative Denial of Claim for each claim for refund filed by WMI for each tax period from February 2012 through September 2014, stating the basis for its tentative denial as to each claim as follows:

BASED ON SEVERAL CONFERENCE CALLS WITH THE DEPARTMENT'S GENERAL COUNSEL, YOU HAVE BEEN INFORMED THAT CNG USED FOR HIGHWAY PURPOSES IS TAXABLE AND HAS ALWAYS BEEN TAXABLE. YOU WITHDREW YOUR PRIVATE LETTER RULING REQUEST BASED ON THE DEPARTMENT'S DETERMINATION. YOUR CREDIT REQUEST IS ALSO DENIED.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 50.

### **COUNT I**

**The Illinois MFT does not classify CNG as a "Motor Fuel" or "Special Fuel" or a "Fuel" that is taxable under the Act, and the Department's Motor Fuel regulations in effect during the periods covered by WMI's claims did not classify CNG as a "motor fuel" or a "special "fuel" or a "fuel."**

51. WMI incorporates by this reference paragraphs 1 through 50 hereof and realleges each paragraph as though fully set forth below.

**ANSWER:** The Department incorporates by reference all of its answers to Paragraphs 1 through 50 within the answer to Paragraph 51.

52. The Illinois MFT expressly states that a "Motor Fuel" and a "Special Fuel" means "volatile and inflammable liquids."

**ANSWER:** The Department admits the existence, force and effect of the IFTA provision excerpts cited in Paragraph 52 and states such provision excerpts speak for themselves.

53. The Department's Motor Fuel regulations provide that: "'Fuel' means all liquids defined

as 'motor fuel' and aviation fuels and kerosene, but excluding liquefied petroleum gasses. (Section 1.19 of the Law)." 86 Ill Admin. Code § 500.100.

**ANSWER:** The Department admits the existence, force and effect of the regulation cited in Paragraph 53 and states such regulation speaks for itself.

54. The IFTA provisions that "constitute an interstate compact approved by Congress" include "a uniform definition of vehicles to which the Agreement applies," not a uniform definition of fuel.

**ANSWER:** The Department states that paragraph 54 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

55. The IFTA definition of "Motor Fuels" means "all fuels placed in the supply tank of qualified motor vehicles," but the IFTA does not define fuels.

**ANSWER:** The Department admits the existence, force and effect of the regulation cited in Paragraph 55 and states such regulation speaks for itself. The Department states that Paragraph 55 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

56. CNG is not a "fuel" or a "Motor Fuel" for purposes of the IFTA, and it is not a "Motor Fuel" or a "Special Fuel" for purposes of the Illinois MFT, and it is not a "fuel" for purposes of the Department's Motor Fuel Tax regulations.

**ANSWER:** The Department states that Paragraph 56 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. The Department further affirmatively denies the allegations contained within Paragraph 56.

57. Contrary to the Department's stated reason for tentative denial of WMI's claims - "that CNG used for highway purposes is taxable and has always been taxable"- CNG has never been, and cannot physically be, a "liquid" and thus, CNG has never been a "fuel" under the Department's regulation, or a "motor fuel" or a "special fuel" under the Illinois

MFT, and therefore cannot ever have been "taxable" under the Illinois MFT.

**ANSWER:** The Department states that Paragraph 57 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. The Department further affirmatively denies the allegations contained within Paragraph 57.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count I of this matter.
- B) That the Department's Notices of Tentative Denial of Claim be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

## COUNT II

**The Department's inclusion of CNG in the classification of "Motor Fuel" violates Article IX, Section 1 and Article II, Section 1 of the Illinois Constitution of 1970.**

58. WMI incorporates by this reference paragraphs 1 through 57 hereof and realleges each paragraph as though fully set forth below.

**ANSWER:** The Department incorporates by reference all of its answers to Paragraphs 1 through 57 within the answer to Paragraph 58.

59. Article IX, Section 1 of the Illinois Constitution of 1970 provides as follows:

### SECTION 1. STATE REVENUE POWER

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

Ill. Const. 1970, Art. IX, § 1.

**ANSWER:** The Department admits the existence, force and effect of the Illinois Constitution provision cited in Paragraph 59 and states such provision speaks for itself.

60. Article II, Section 1 of the Illinois Constitution of 1970 provides as follows:

### SECTION 1. SEPARATION OF POWERS

The legislative, executive and judicial branches are separate. No branch

shall exercise powers properly belonging to another.

Ill. Const. 1970, Art. II, § 1.

**ANSWER:** The Department admits the existence, force and effect of the Illinois Constitution provision cited in Paragraph 60 and states such provision speaks for itself.

61. The Illinois MFT expressly limits its definition of taxable fuels to "liquid" fuels.

**ANSWER:** The Department states that Paragraph 61 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

62. Section 5 of the Illinois MFT, a non-definitional section dealing with certain reporting requirements, expressly references gases by stating that the reporting requirements apply to "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." 35 ILCS 505/5.

**ANSWER:** The Department admits the existence, force and effect of the statutory provision cited in Paragraph 62 and states such provision speaks for itself.

63. Section 5 of the Illinois MFT clarifies that "For purposes of this Act, liquefied petroleum gases shall mean and include any material having a vapor pressure not exceeding that allowed for commercial propane composed predominantly of the following hydrocarbons, either by themselves or as mixtures: Propane, Propylene, Butane, (normal butane or iso-butane) and Butylene (including isomers)." 35 ILCS 505/5.

**ANSWER:** The Department admits the existence, force and effect of the statutory provision cited in Paragraph 63 and states such provision speaks for itself.

64. Despite these references to combustible gases in Section 5, the Illinois MFT definition of "Motor Fuel" in section 1.1 of the Act, and of "Special Fuel" in section 1.13 of the Act,

require the fundamental physical property for taxability to be that the fuel is a "liquid."

**ANSWER:** The Department admits the existence, force and effect of the statutory provisions cited in Paragraph 64 and states such provisions speak for themselves.

65. Section 1.13 of the Illinois MFT specifically provides that the definition of "Special Fuel" in the Act "does not include ... combustible gases as defined in Section 5, example (B), of this Act" [ 35 ILCS 505/1.13.], and section 5 of the Illinois MFT, example (B), pertains to "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." 35 ILCS 505/5.

**ANSWER:** The Department admits the existence, force and effect of the statutory provision excerpts cited in Paragraph 65 and states such provisions speak for themselves.

66. Section 1.19 of the Illinois MFT specifically defines "Fuel" as "all liquids defined as 'Motor Fuel' in Section 1.1. of this Act and aviation fuels and kerosene, but excluding liquefied petroleum gases." 35 ILCS 505/1.19.

**ANSWER:** The Department admits the existence, force and effect of the statutory provision excerpts cited in Paragraph 66 and states such provisions speak for themselves.

67. Illinois membership in the IFTA did not delegate to IFTA the authority of the Illinois General Assembly to amend Illinois statutes, evidenced in the IFTA by the fact that one of the three core provisions of the IFTA that implement the interstate compact is the "Retention of each jurisdiction's sovereign authority to determine tax rates, exemptions and exercise other substantive tax authority." IFTA, Article I, R., 130.100.010.

**ANSWER:** The Department states that Paragraph 67 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86

Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of the IFTA provision excerpt cited in Paragraph 67 and states such provision speaks for itself.

68. The General Assembly did not delegate to the Department the authority to expand the scope of the Illinois MFT by rendering subjects or objects to tax under the Illinois MFT that the General Assembly did not expressly render subject to tax by including said subject or object in its definitions of "Motor Fuel," "Special Fuel" or "Fuel."

**ANSWER:** The Department states that Paragraph 68 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

69. The Department's treatment of CNG as a taxable "Motor Fuel" under the Illinois MFT, both as (i) a policy of general applicability that should be adopted by regulation, and (ii) as a regulation adopted effective October 1, 2014, violates Article 9, Section 1 of the Illinois Constitution of 1970 by exercising Legislative power over taxation that was not delegated by the General Assembly to an agency of the executive branch and, such unauthorized exercise of Legislative power by an executive agency also violates Article I, Section 2 of the Illinois Constitution of 1970 which reserves to the General Assembly the plenary power to raise revenue and forbids contracting such power away, say, through the IFTA.

**ANSWER:** The Department states that Paragraph 69 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. Further, although not required to answer, the Department affirmatively denies the allegations contained within Paragraph 69. The Department adds that the regulation mentioned was amended on August 21, 2014, not October 1, 2014.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count II of this matter.
- B) That the Department's Notices of Tentative Denial of Claim be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

### COUNT III

**Because the Department denied WMI's claims for refund on the stated basis that "CNG USED FOR HIGHWAY PURPOSES IS TAXABLE AND HAS ALWAYS BEEN TAXABLE" even though the Department's Illinois MFT regulation did not mention CNG until amended on October 1, 2014, the Department denial is either: (A) applying a policy of broad applicability to WMI that should have been adopted by regulation prior to October 1, 2014, in violation of the Administrative Procedure Act, or (B) applying retroactively an October 1, 2014 regulatory amendment that exceeds the terms and intended scope of the Illinois MFT, also in violation of the Administrative Procedure Act.**

70. WMI incorporates by this reference paragraphs 1 through 69 hereof and realleges each paragraph as though fully set forth below.

**ANSWER:** The Department incorporates by reference all of its answers to Paragraphs 1 through 69 within the answer to Paragraph 70.

71. A "rule" for purposes of the Illinois Administrative Procedure Act ("APA") "means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy" excluding statements of internal agency management "not affecting the private rights or procedures available to persons or entities outside the agency," nor informal advisory rulings, or intra-agency memoranda, documents prepared for the Legislative Reference Bureau, or certain documents prepared by the Illinois Environmental Protection Agency. 5 ILCS 100/1-70.

**ANSWER:** The Department admits the existence, force and effect of the statutory provision excerpts cited in Paragraph 71 and states such provisions speak for themselves.

72. The Department's position that "CNG USED FOR HIGHWAY PURPOSES ... HAS ALWAYS BEEN TAXABLE" is a statement of general applicability for all periods prior

to October 1, 2014, when the Department first amended its Motor Fuel regulations to first mention CNG.

**ANSWER:** The Department states that Paragraph 72 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. Further, although not required to answer, the Department affirmatively denies the allegations contained within Paragraph 72.

73. Under the Illinois APA, "no agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act." 5 ILCS 100/5-10.

**ANSWER:** The Department admits the existence, force and effect of the statutory provision cited in Paragraph 73 and states such provision speaks for itself.

74. The Department's position stated on May 1, 2015, that "CNG USED FOR HIGHWAY PURPOSES ... HAS ALWAYS BEEN TAXABLE" is a "rule" which is not "valid or effective against" WMI and it may not "be invoked by the agency for any purpose" against WMI because it was not "made available for public inspection and filed with the Secretary of State as required by [the APA]".

**ANSWER:** The Department states that Paragraph 74 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. Further, although not required to answer, the Department affirmatively denies the allegations contained within Paragraph 74.

75. The Department's position stated on May 1, 2015, that "CNG USED FOR HIGHWAY PURPOSES IS TAXABLE" attempts to bolster the illegal rule existing prior to October 1, 2014, when the Department amended its Motor Fuel regulations to first mention CNG as a taxable fuel.

**ANSWER:** The Department states that Paragraph 75 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

76. Because the October 1, 2014 amendment to section 500.100 of the Department's Motor Fuel regulations to mention for the first time and treat CNG as a taxable fuel exceeds the permissible scope of the definitions of "Motor Fuel," "Special Fuel" and "Fuel" in the Illinois MFT, and the Illinois MFT applies on a "per gallon" basis to "all motor fuel used in motor vehicles operating on the public highways" [35 ILCS 505/2(a)], the amendments to section 500.100 are unauthorized and invalid.

**ANSWER:** The Department states that Paragraph 76 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. Further, although not required to answer, the Department affirmatively denies the allegations contained within Paragraph 76.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count III of this matter.
- B) That the Department's Notices of Tentative Denial of Claim be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

#### COUNT IV

**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.**

77. WMI incorporates by this reference paragraphs 1 through 76 hereof and realleges each paragraph as though fully set forth below.

**ANSWER:** The Department has filed contemporaneously with this answer a Motion to Dismiss Count IV for lack of jurisdiction and therefore is not answering this count at this time.

Dated: July 28, 2015

Respectfully submitted,  
**Illinois Department of Revenue**

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