

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

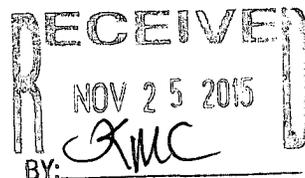
UNIVERSAL SCRAP METALS, INC.)

Petitioner,)

v.)

ILLINOIS DEPARTMENT)
OF REVENUE,)

Respondent.)
_____)



Case No. 15-17244

PETITION

The Petitioner, Universal Scrap Metals, Inc. (“Universal Scrap” or “Petitioner”), hereby petitions the Illinois Independent Tax Tribunal to dismiss a Notice of Tax Liability (collectively, the “Assessment”) issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

INTRODUCTION

Universal Scrap is a wholesaler and processor of scrap metal in Chicago, Illinois. As a scrap metal processor, it is entitled to utilize Manufacturer’s Purchase Credit (“MPC”) on its qualifying purchases. Petitioner, as asserted in an Affidavit to be provided, prepared and timely filed its MPC Returns in each of the relevant years (and, such returns were contemporaneously signed by the then President of the company who is no longer alive). However, during the course of the Department’s audit, the Auditor informed Petitioner that certain of its MPC filings were not received by the Department, and as a result, the Department sought to deny Petitioner’s use of validly reported Manufacturer’s Purchase Credits. Petitioner responded by providing the Auditor with copies of the MPC filings in questions and informed the Auditor that they were

indeed timely filed. The Assessment is based, in part, on the incorrect assertion by the Department that Universal Scrap failed to timely file its MPC returns with the Department. To the contrary, such returns were timely filed and Universal Scrap is entitled to use such MPC credits on its qualifying purchases. Accordingly, the Assessment must be revised consistent therewith.

BACKGROUND AND RELEVANT FACTS

1. Universal Scrap is an Illinois corporation, whose address is 2500 W. Fulton St., Chicago, IL 60612. Universal Scrap's Illinois taxpayer ID number is 3861-1831. Universal Scrap's telephone number is 312-666-0011.

2. Universal Scrap prepared and timely filed IDOR Forms ST-16s (Manufacturer's Purchase Credit Earned) and ST-17s (Manufacturer's Purchase Credit Used) each year of the audit (2009-2012) (the "MPC Returns" or "Returns").

3. Universal Scrap filed the MPC Returns by mailing them via regular United States Postal Service. This method did not require signature by the Department, nor did it provide proof of delivery to Universal Scrap.

4. On October 6, 2015, the Department issued a statutory Notice of Tax Liability, Form EDA-105-R, ROT Audit Report (the "Assessment"), to Universal Scrap in the amount of \$37,098.11 for the reporting period of July 1, 2009 through December 31, 2012. A copy of the Assessment is attached as Exhibit A.

5. The Assessment was comprised of \$28,594.00 in Tax; \$5,719.00 in Late Payment Penalty; \$0.00 in Late Filing Penalty; and \$2,785.11 in Interest.

6. In support of the Assessment, the Department provided Petitioner with a Global Taxable Exceptions Detailed Report (the "Exceptions Report").

7. Petitioner disputes the Assessment based on items erroneously included on the Exceptions Report as taxable items.

APPLICABLE LAW

8. ILCS Section 105/3-85 and Illinois Admin. Code Section 130.331 provide the basis to earn and utilize Manufacturer's Purchase Credit. There is no dispute that Petitioner is entitled to earn and utilize Manufacturer's Purchase Credit.

9. ILCS Section 105/3-85(b) and Illinois Admin. Code Section 130.331(e)(6) both provide that a purchaser that fails to timely file MPC Returns shall forfeit such credit *unless*, "the failure to file was due to *reasonable cause*."

10. ILCS Section 105/3-85(b) and Illinois Admin. Code Section 130.331(e)(7) both provide that the annual *MPC Returns may be amended to report and claim credit* on qualifying purchases of manufacturing machinery and equipment not previously reported at any time before the credit would have expired, *unless* both the Department and the purchaser have agreed to an extension of the statute of limitations for the issuance of a Notice of Tax Liability, in which case such Returns can be filed until the end of the agreed extension period.

11. These sections further provide, "Manufacturer's Purchase Credit that had not been previously reported and is included in an amended [MPC Return] submitted as a result of such an agreed extension will expire as provided in this subsection... or at the end of the agreed extension period, *whichever is longer*. If the time for assessment or refund has been extended by agreement, amended reports for a calendar year may be filed at any time prior to the date which the statute of limitations for the calendar year or portion thereof has been extended. In this case, Petitioner signed an agreed Statute of Limitations Waiver.

ERROR 1

12. The Department improperly disallowed Petitioner's validly taken Manufacture's Purchase Credit as such Returns were timely filed.

13. The Department claims that no MPC Returns were filed by Universal Scrap. This is simply not accurate. To the contrary, Universal Scrap's then Controller, Dennis Klein ("Mr. Klein" or "Controller"), prepared and timely filed MPC Returns in each of the years at issue. Petitioner will provide an affidavit signed by Mr. Klein that he prepared and timely filed such Returns via U.S. mail and such filings were never returned to Petitioner.

14. Further, the fact that the Department purports not to have a record of the filings does *not* result in the conclusion that the MPC Returns were not mailed to the Department by Mr. Klein, nor does it result in the conclusion that the MPC Returns were not received by the Department. It only stands for the proposition that the Department does not have a record of it now.

15. Thus, these amounts should be removed from the taxable events in the Exceptions Report and the total amount of the Assessment, including corresponding amounts of penalty and interest should be reduced accordingly.

ERROR 2

16. Even if the Department's allegation of non-filing is correct, the Department still improperly disallowed Petitioner's validly taken Manufacture's Purchase Credit, because it failed to apply the equitable doctrine of reasonable cause as required by both Statute and the Department's Regulations.

17. As Mr. Klein's affidavit will state, he timely prepared and timely mailed Petitioner's MPC Returns. Such returns were timely signed by the then President of the

company who was no longer alive at the time of the Audit, and thus he could *not* have signed the MPC Returns after-the-fact when the Auditor informed Petitioner that the Department does not have a record of such filings. This fact reveals that the MPC Returns were timely prepared and there would have been no reason to not mail the prepared and executed Returns. Moreover, the timely execution of the Returns, coupled with the repeated assertion by the Controller to the Auditor during the Audit that he personally mailed such Returns and would testify to that effect, should justify *reasonable cause* of an intent to timely file, even if the Department's allegation is correct.

18. Thus, Petitioner acted reasonably and in good faith and its MPC Returns should be deemed timely filed, thereby enabling Petitioner to utilize its validly earned Manufacture's Purchase Credits.

ERROR 3

19. Even if the Department's allegation of non-filing is correct and reasonable cause is not granted, the Department still improperly disallowed Petitioner's validly taken Manufacture's Purchase Credit, because it failed to accept Petitioner's MPC Returns as an amended return when Petitioner handed copies of the executed Returns to the Auditor upon learning the Department had no record of Petitioner's MPC filings.

20. Manufacture's Purchase Credit reports may be amended to report and claim credit on *qualifying purchases not previously reported at any time before the credit would have expired*, unless the Department and the purchaser have agreed to an extension of the statute of limitations for the issuance of a Notice of Tax Liability.

21. Petitioner and the Department did indeed execute a statute of limitations waiver for the issuance of a Notice of Tax Liability thereby enabling Petitioner to submit MPC Returns

after the original due date of such Returns, provided it was before the end of the agreed extension period, which in this case it was before the end of the agreed extension period.

22. In fact, upon learning from the Auditor that the Department did not have a record of the MPC Returns at issue, Petitioner provided copies of such filings to the Auditor. Thus, to the extent the Department's allegation of non-filing is correct and reasonable cause is not granted, Petitioner timely provided MPC Returns to the Department which would have reported qualifying purchases not previously reported to the Department at any time before. Again, thereby enabling Petitioner to utilize its validly earned Manufacture's Purchase Credits.

ERROR 4

23. At all times, Petitioner acted reasonably and in good faith. Petitioner did not know the Department did not have any record of receiving the MPC Returns at issue. Further, when there were questions of interpretation, Petitioner consulted with and relied upon its then outside accounting firm for guidance on sales and use tax matter in general. Consequently, Petitioner is entitled to complete abatement of penalty for reasonable cause.

CONCLUSION

24. Petitioner timely prepared and timely filed each of the MPC Returns challenged by the Department. Such returns were signed by the then President of the company who was no longer alive when this issue arose in the Audit. Petitioner's former Controller is prepared to testify via affidavit that he prepared and timely mailed such Returns to the Department, and further, that such Returns were not sent back to the Petitioner via U.S. Mail. The fact that the Department's records do not currently show the Returns were received by the Department does not necessitate that the Returns were not timely filed by Petitioner, nor does it necessitate that such Returns were not in fact received by the Department. It only means the Department does

not have a current record of receipt. Further, given the overall facts and circumstances of this case as explained above, Petitioner is entitled to the statutory remedy of reasonable cause to deem such returns timely filed. Finally, if reasonable cause is not granted, Petitioner is nonetheless entitled to treat the Returns provided to the Auditor during the Audit as duly filed amended returns, which likewise will enable Petitioner to take MPC credits that were validly earned.

WHEREAS, Petitioner requests that the Assessment be revised and reduced consistent with the Errors identified for the reasons stated above. Petitioner further reserves the right to supplement or amend this Petition.

Respectfully submitted,

UNIVERSAL SCRAP METALS, INC.



One of its attorneys

David C. Blum (ARDC # 6242542)
Christopher M. Heintskill (ARDC# 6272391)
Levenfeld Pearlstein, LLC
2 N. LaSalle St., Suite 1300
Chicago, IL 60602
p. 312-346-8380
f. 312-346-8434
dblum@lplegal.com

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, a non-attorney, certifies that she served a true and correct copy of the foregoing **Petition** upon the parties listed below, by personal service before 5:00 p.m. on November 25, 2015.

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph Street, 7-900
Chicago, Illinois 60601



Izabela Kropiewnicka

David C. Blum
LEVENFELD PEARLSTEIN, LLC
2 North LaSalle Street, Suite 1300
Chicago, Illinois 60602
312-346-8380
312-346-8434 (fax)

EXHIBIT A

Notice of Tax Liability
for Form EDA-105-R, ROT Audit Report



#BWNBKMGV
#CNXX X165 22X7 3762#
UNIVERSAL SCRAP METALS INC
ATTN: POA-DAVID BLUM
2 N LA SALLE ST STE 1300
CHICAGO IL 60602-3709

October 6, 2015



Letter ID: CNXXX16522X73762

Account ID: 3861-1831

We have audited your account for the reporting periods July 01, 2009, through December 31, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	28,594.00	0.00	28,594.00
Late Payment Penalty Increase	5,719.00	0.00	5,719.00
Interest	2,785.11	0.00	2,785.11
Assessment Total	\$37,098.11	\$0.00	\$37,098.11

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed 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 **December 07, 2015**. 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 liability 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.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action to satisfy your liability.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579