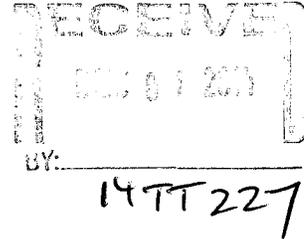


HORSEHEAD CORPORATION,
Petitioner

vs.

ILLINOIS DEPARTMENT OF REVENUE
Respondent



PETITION FOR HEARING

The Petitioner, HORSEHEAD CORPORATION, hereby petitions the Illinois Independent Tax Tribunal to review and reverse two Notices of Tax Liability (individually, a "Notice" and collectively, the "Notices") issued by the Illinois Department of Revenue ("Department"), for the reasons stated below:

INTRODUCTION

- 1. The first Notice was issued by the Department on October 3, 2014 assessing in the amount of \$497,579.00 in tax, \$213,983 in penalties and \$213,489.13 in interest for taxable periods January 1, 2007 through June 30, 2009. A copy of the first Notice is attached to this Petition as Exhibit B.
- 2. The second Notice was issued by the Department on October 3, 2014 assessing in the amount of \$452,854.00 in tax, \$96,547.00 in penalties and \$46,588.98 in interest for taxable periods July 1, 2009 through June 30, 2011. A copy of the second Notice is likewise attached to this Petition as Exhibit B.
- 3. Petitioner is a corporation with its principal place of business in Pittsburgh, Pennsylvania, but with a location in Calumet City, Illinois.
- 4. The primary office is located at 4955 Steubenville Pike, Suite 405, Pittsburgh, PA 15206 (please note that the Notices were sent to 300 Frankfort Road, Monaca, PA, 15061-2210). Its telephone number is 724-774-1020. The Taxpayer Account number is 20-0447346 and Account ID number is 3860-1567.

BACKGROUND AND RELEVANT FACTS

- 5. Objection to Notice of Tax Liability/Statement of Fact:
 - (i) Petitioner operates a zinc refining facility located in Calumet City, Illinois.

- (ii) During the audit periods, Petitioner purchased carbon based “coke” in connection with its zinc refining operations; coke is a carbon based element and fuel source that is used as a critical component of, and reagent in, the zinc refining operation.
- (iii) The basis of the Notices is that the Department is seeking to impose Retailers’ Occupation Tax, E911 Surcharge Tax and Use Tax (collectively, “Sales Taxes”) on Petitioner’s purchases of the coke.
- (iv) In the NOTICES, the Department contends that the coke does not affect a direct change in the finished product, nor is incorporated into the finished product, and should be subject to Sales Taxes.

APPLICABLE LAW

6. Matter at issue and applicable law:

- (i) Petitioner objects to the Notices in that the coke that is purchased acts as a catalyst causing a direct change on the finished zinc product and is also directly incorporated (in part) into the finished zinc product.
- (ii) The coke falls within the definition of a “Type I” product in that it is added for the purchase of modifying the finished products (zinc), and a measurable part of the coke becomes a part of the end zinc, *see*, 86 Illinois Administrative Code Sections 130.1901(c) and (d); further, the coke qualifies as an exempt catalyst pursuant to 86 Illinois Administrative Code Section 130.330(c)6).
- (iii) Petitioner sells the zinc directly to other users, and thus the coke purchases should be exempt from Sales Taxes.
- (iv) Further, the Notices impose a late payment and late filing penalty, and Petitioner objects to those penalties.

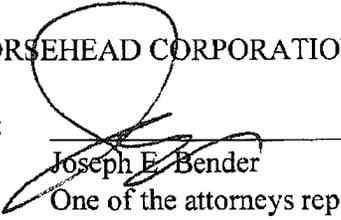
CONCLUSIONS AND RELIEF REQUESTED

Petitioner seeks that the Notices be cancelled in their entirety, and that the Petitioner is entitled to: (i) relief from the Sales Taxes imposed by the Notices and (ii) abatement in full of the penalties imposed in the Notices.

Submitted this 1st day of December, 2014

HORSEHEAD CORPORATION

By:


Joseph E. Bender

One of the attorneys representing Petitioner
Horsehead Corporation

Representative:

Joseph E. Bender
Difede Ramsdell Bender
900 Seventh Street N.W.
Suite 810
Washington DC 20001
jbender@drblaw.net
202 534-3230 (Washington, DC)
312 882-9736 (Chicago, IL)
ARDC: 6257870
(IL 2848 Attached as Exhibit A)

Exhibit A

Power of Attorney



Illinois Department of Revenue
IL-2848 Power of Attorney

Read this information first

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney.
Do not send this form separately.

Step 1: Complete the following taxpayer information

1 <u>Horsehead Corporation</u> Taxpayer's name	3 <u>4955 Steubenville Pike Suite 405</u> Taxpayer's street address
2 <u>20-0447346</u> Taxpayer's identification number(s)	<u>Pittsburgh</u> <u>PA</u> <u>15205</u> City State ZIP

Step 2: Complete the following information

4 The taxpayer named above appoints the following to represent him before the Illinois Department of Revenue.

<u>Joseph E. Bender</u> Name	_____ Name	_____ Name
<u>Difede Ramsdell Bender</u> Name of firm	_____ Name of firm	_____ Name of firm
<u>900 7th St. NW. #810</u> Street address	_____ Street address	_____ Street address
<u>Washington DC 20001</u> City State ZIP	_____ City State ZIP	_____ City State ZIP
<u>(202) 534-3230</u> Daytime phone number	<u>()</u> Daytime phone number	<u>()</u> Daytime phone number
<u>jbender@DRBLaw.net</u> E-mail address	_____ E-mail address	_____ E-mail address
<u>sales, use 2005-2014</u> Specific tax type Year or period	_____ Specific tax type Year or period	_____ Specific tax type Year or period

5 The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information.

The attorneys-in-fact named above **do not** have the power to -- Check only the items below you **do not** wish to grant.

- endorse or collect checks in payment of refunds.
- receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- execute consents extending the statutory period for assessments or collection of taxes.
- delegate authority or substitute another representative.
- file a protest to a proposed assessment.
- execute offers in compromise or settlement of tax liability.
- represent the taxpayer before the department in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
- obtain a private letter ruling on behalf of the taxpayer.
- perform other acts (explain) _____

6 This power of attorney revokes all prior powers of attorney on file with the department with respect to the same matters and years or periods covered by this form, except for the following:

_____ Name	_____ Name	_____ Name
_____ Street address	_____ Street address	_____ Street address
_____ City State ZIP	_____ City State ZIP	_____ City State ZIP
<u>()</u> Daytime phone number	<u>()</u> Daytime phone number	<u>()</u> Daytime phone number
_____ Date granted	_____ Date granted	_____ Date granted



7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

Joseph Bender								
Name			Name			Name		
900 7th St. NW #810								
Street address			Street address			Street address		
Washington	DC	20001						
City	State	ZIP	City	State	ZIP	City	State	ZIP
(202) 534-3230								
Daytime phone number			Daytime phone number			Daytime phone number		

Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Taxpayer's signature	Title, if applicable	Date
Spouse's signature	Title, if applicable	Date
<i>[Signature]</i>	<i>Vice President, General Counsel & Secretary</i>	<i>12/1/14</i>
If corporation or partnership, signature of officer or partner	Title, if applicable	Date

Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

I declare that I am not currently under suspension or disbarment and that I am

- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
- duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
- enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

<u>Atty</u>	<u>IL</u>		<i>[Signature]</i>	<i>12-1-14</i>
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)		Signature	Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)		Signature	Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)		Signature	Date

Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer

_____ is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

Signature of witness	Date
Signature of witness	Date

_____ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary	Date
---------------------	------

Notary seal



Exhibit B

Copy of Notices of Tax Liability

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



_____ #BWNKMGV
_____ #CNXX X16X 1393 12X7#
_____ HORSEHEAD CORP
_____ 300 FRANKFORT RD
_____ MONACA PA 15061-2210

October 3, 2014



Letter ID: CNXXX16X139312X7

Account ID: 3860-1567



We have audited your account for the reporting periods January 01, 2007, through June 30, 2009. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	497,579.00	0.00	497,579.00
Late Payment Penalty Increase	199,032.00	0.00	199,032.00
Late Filing Penalty Increase	14,951.00	0.00	14,951.00
Interest	213,489.13	0.00	213,489.13
Assessment Total	\$925,051.13	\$0.00	\$925,051.13

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 02, 2014. 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

Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 **Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.
- 2 **Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 **Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 **Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 **Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 **Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
- 7 **Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 **Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.
- 9 **Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

10 **100 percent interest penalty** - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
- did not report or pay that liability before we issued a Notice of Deficiency.

11 **Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

12 **Nonfiling penalty for transaction return** - You owe this penalty if you are a retailer required to file a transaction return (ST-556, Sales Tax Transaction Return) by the due date, even if no tax is due on the return.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV
#CNXX X151 1821 7921#
HORSEHEAD CORP
300 FRANKFORT RD
MONACA PA 15061-2210

October 3, 2014



Letter ID: CNXXX15118217921

Account ID: 3860-1567



We have audited your account for the reporting periods July 01, 2009, through June 30, 2011. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	452,854.00	0.00	452,854.00
Late Payment Penalty Increase	90,571.00	0.00	90,571.00
Late Filing Penalty Increase	5,976.00	0.00	5,976.00
Interest	46,588.98	0.00	46,588.98
Assessment Total	595,989.98	0.00	595,989.98

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 02, 2014. 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.

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- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
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