

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

ALERIS RECYCLING, INC.)	
Petitioner,)	
)	
v.)	Case No. 14-TT-247
)	Judge Brian F. Barov
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

ANSWER

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

1. On October 31, 2014, the Department issued a Notice of Tax Liability to Aleris for the Audit Period, assessing \$191,067.00 in Tax, \$38,213.00 in penalties and \$11,964.85 in interest, in the total amount of \$241,244.85. A copy of the Notice of Tax Liability (“Notice”) is attached as Exhibit A to this Petition. Aleris objects to \$160,917 of the amount assessed by the Notice, plus related interest and all penalty charges.

ANSWER: The Department admits that On October 31, 2014, the Department issued a Notice of Tax Liability to Aleris for the Audit Period, assessing \$191,067.00 in Tax, \$38,213.00 in penalties and \$11,964.85 in interest, in the total amount of \$241,244.85 and that a copy of the Notice of Tax Liability (“Notice”) is attached as Exhibit A to the Petition. The remaining allegations in paragraph 1 of the petition do not consist of material allegations of fact that require a response from the Department.

2. Aleris is a Delaware corporation with its principal place of business located in

Cleveland, Ohio. Aleris maintains a production and manufacturing facility located at 400 East Lincoln Highway, Chicago Heights, Illinois 60411 (“Chicago Heights Facility”). The telephone number of Aleris’ Vice President, Legal, Cathryn D. Griffin, is (216) 910-3580, and its Taxpayer Account number is 3998-3031.

ANSWER: The Department admits that Aleris is a Delaware corporation. The allegation that its principal place of business is located in Cleveland, Ohio is vague and conclusory and is denied. The remaining allegations in paragraph 2 of the petition are admitted.

3. Aleris is in the business of processing the byproducts derived from melting aluminum metal. These byproducts contain amounts of aluminum that conventional aluminum manufacturers are unable to process. Aleris’ processing of the byproducts yields aluminum metal in a useable form. Aleris sells its aluminum metal to customers in the automotive, manufacturing, and steel industries.

ANSWER: The Department admits that Aleris is in the business of recycling aluminum but otherwise denies that the characterization of the business of Aleris in paragraph 3 of the petition fairly and accurately describes its business. The Department admits that Aleris sells its aluminum metal to customers in the automotive industry. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 of the petition that the Petitioner sells its aluminum metal to customers in the manufacturing and steel industries, and therefore neither admits nor denies said allegations. The Department denies any and all remaining allegations in paragraph 3 of the petition.

4. At its Chicago Heights Facility, Aleris processes aluminum-containing byproducts including heavily contaminated scraps and drosses (collectively, the “Byproducts”). Drosses are a mixture of aluminum metal and aluminum oxide.

ANSWER: The Department admits that at its Chicago Heights Facility, Aleris recycles aluminum scrap and drosses. The characterization of the scraps and drosses as being “heavily” contaminated is vague and conclusory and is denied. The Department admits that dross is skim from the aluminum melting process, but denies that the definition of dross by the petitioner is a fair and accurate definition. The Department denies all other allegations in paragraph 4 of the petition.

5. Aleris operates rotary furnaces to process the Byproducts at the Chicago Heights Facility. In the rotary furnaces, the Byproducts are heated until they become a liquid state. A chemical referred to as salt flux is then added to the liquid mixture. The salt flux is a mixture of two or more salt compounds including sodium chloride and potassium chloride.

ANSWER: The Department admits that Aleris operates rotary furnaces to recycle aluminum at the Chicago Heights Facility. The Department also admits that aluminum scraps are heated in the furnaces until they become a liquid state. The Department also admits that salt flux, being a mixture of two or more salt compounds including sodium chloride and potassium chloride is added to the furnace as part of the recycling process. The Department denies any and all other allegations in paragraph 5 of the petition.

6. The salt flux ruptures and absorbs the oxide films that surround the aluminum droplets contained in the Byproducts, effectively removing the oxides from the Byproducts. The removal of oxides allows the droplets to coalesce into aluminum metal that is sold to customers. The facts described in paragraphs 4 and 5 are referred to as the “Treatment Process.”

ANSWER: The Department denies that the allegations in paragraph 6 of the petition fairly and accurately describe any part of the recycling process. The Department further denies any and all other allegations in paragraph 6 of the petition.

7. The salt flux is not consumed during the Treatment Process. Nor is it chemically changed. Rather, the salt flux becomes part of a new byproduct, referred to as salt cake, that results from the Treatment Process. While it is possible to extract the salt flux from the salt cake for reuse, Aleris chooses not to do so because salt flux is relatively inexpensive.

ANSWER: The Department admits that the salt flux is not consumed during the recycling process, nor chemically changed. The remaining allegations in paragraph 7 of the petition are vague and are therefore denied.

8. Aleris remits Tax to the Department using the Department's Form ST-1 ("ST-1 Returns"). During the Audit Period, Aleris filed ST-1 Returns with the Department indicating that no Tax was due on its purchases of salt flux because its use of salt flux during the Treatment Process qualified for the Illinois tax exemption for chemicals used in a manufacturing process ("MM&E exemption"). *See* 35 ILCS 105/3-50(4); 86 Ill. Admin. Code § 130.330(c)(6).

ANSWER: The Department admits that Aleris remits Tax to the Department using the Department's Form ST-1 ("ST-1 Returns"). The Department states that the returns speak for themselves and therefore deny the remaining allegations in paragraph 8 of the petition.

9. By audit notice dated November 2, 2012, the Department initiated an audit ("Audit") of Aleris' ST-1 Returns for the Audit Period. On Audit, the Department rejected Aleris' application of the MM&E exemption to its purchases of salt flux. \$160,917 of the tax assessed by the Notice relates to the salt flux dispute.

ANSWER: The Department admits the allegations in paragraph 9 of the petition.

10. The Department erroneously assessed Tax on Aleris' purchases of salt flux during the Audit Period. The salt flux used in Aleris' Treatment Process is not subject to Tax because it qualifies for an MM&E exemption under 35 ILCS 105/3-50(4) and 86 Illinois Administrative

Code section 130.330(c)(6). The salt flux qualifies for the exemption because it effects a direct and immediate change upon the Byproducts by rupturing and absorbing the oxide films that surround the aluminum droplets contained in the Byproducts, allowing the aluminum droplets to coalesce into aluminum metal for sale to customers. Additionally, the salt flux is not consumed during the Treatment Process.

ANSWER: The Department denies the allegations in paragraph 10 of the petition.

11. The Department has issued several private letter rulings recognizing the application of the MM&E exemption in fact circumstances similar to the present situation. In ST 08-0004-PLR (5/8/08), the Department concluded that a chemical “pickling” process, which used sulfuric acid to remove rust from steel, qualified for the exemption (ST 08-0004-PLR (5/8/08)). Similarly, in ST-14-0001-PLR (1/2/2014), the Department concluded that the use of liquid nitrogen to freeze dry concentrated liquid products qualified for the exemption (ST 14-0001-PLR (1/2/2014)). In addition, in ST 11-0010-PLR (08/18/11), the Department concluded that chemicals used in a blasting process during quarrying qualified for the exemption (ST 11-0010-PLR (08/18/11)). Copies of these private letter rulings are attached as Exhibit B to this Petition.

ANSWER: The Department admits that copies of the cited private letter rulings are attached as Exhibit B to the Petition. The Department further states that the private letter rulings speak for themselves and therefore deny any and all other allegations in paragraph 11 of the petition.

12. The Circuit Court of Cook County also recently issued a ruling recognizing the application of the MM&E exemption in a similar fact circumstance. In *PPG Indus., Inc. v. Ill. Dep't of Revenue*, No. 13 L 050140 (Cir. Ct. of Cook County, Ill. Sept. 9, 2014), the Circuit

Court held that the chemicals used by the taxpayer in a glass manufacturing process qualified for the exemption. A copy of the Circuit Court's ruling is attached as Exhibit C to this Petition.

ANSWER: The Department admits that a copy of the Circuit Court ruling in *PPG Indus., Inc. v. Ill. Dep't of Revenue*, No. 13 L 050140 (Cir. Ct. of Cook County, Ill. Sept. 9, 2014), is attached to the petition as Exhibit C. The Department states that the ruling speaks for itself and therefore denies any and all further allegations in paragraph 12 of the petition.

13. Because Aleris' purchases of salt flux qualifies for the MM&E Exemption, the Tribunal should overturn the Department's assessment of all Tax, interest and penalty charges in the Notice related to Aleris' purchases of salt flux.

ANSWER: The Department denies the allegations in paragraph 13 of the petition.

14. The Tribunal also should reverse all penalty assessments imposed by the Notice because Aleris had reasonable cause for its filing positions for the Audit Period. 35 ILCS 735/3-8; 86 Ill. Admin. Code § 700.400(c). Although the Department denied Aleris' claim for refund related to the taxation of salt flux in an earlier audit cycle, Aleris disagreed with the Department's conclusion, and had reasonable cause for its claim of tax exemption during the Audit Period based on the plain language of the governing statute and regulation, as well as the authority cited in paragraphs 11 and 12 above.

ANSWER: The Department denies the allegations in paragraph 14 of the petition.

15. In addition, all penalty charges should be waived because Aleris is a compliant taxpayer that has a history of timely filing its Illinois returns and timely paying the amounts shown due on its returns.

ANSWER: The allegations in paragraph 15 of the petition consist primarily of factual and/or legal conclusions and are denied.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notices of Tax Liability at issue are correct as issued;
- c. ordering judgment in favor of the Department and against the Petitioner; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

Dated: January 27, 2015

Respectfully submitted,
Illinois Department of Revenue,

By: _____


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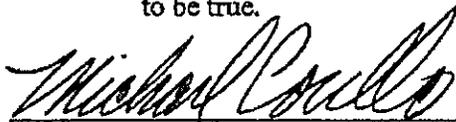
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14-TT-247

AFFIDAVIT OF MICHAEL CORELLO
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I audited Aleris Recycling Inc. for the period June 2010 through December 2012.
4. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Taxpayer's Petition paragraph 3.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.



Michael Corello
Revenue Auditor III
Illinois Department of Revenue

DATED: 1/26/15