

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

MERCURIA ENERGY COMPANY LLC)	
AND SUBSIDIARIES,)	
)	
Petitioner)	
v.)	15-TT-4
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant)	

NOTICE OF FILING

TO: Theodore R. Bots
Matthew S. Mock
David A. Hemmings
BAKER & MCKENZIE LLP
300 East Randolph Street #5000
Chicago, Illinois 60601
(312) 861-8000

PLEASE TAKE NOTICE, that on February 20, 2015, the undersigned representative for the Illinois Department of Revenue (the "Department") filed the Department's Answer to Mercuria Energy Company LLC & Subsidiaries' Petition with the Illinois Tax Tribunal, located at 160 North LaSalle Street, Room N506, Chicago, IL 60601.

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**ILLINOIS INDEPENDENT TAX TRIBUNAL
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MERCURIA ENERGY COMPANY LLC)	
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ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant)	

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Mercuria Energy Company LLC and Subsidiaries’ (“Petitioner”) Petition respectfully pleads as follows:

PARTIES

1. Petitioner, Mercuria Energy Company LLC and Subsidiaries (“Mercuria”), are privately-owned companies of Mercuria Energy Group Ltd.

ANSWER: Admit.

2. Mercuria Energy Company LLC is a holding company of various US entities.

ANSWER: The Department admits that Mercuria Energy Company LLC wholly owns the subsidiaries: Mercuria Energy Services, Inc., Mercuria Energy Trading, Inc. and Mercuria Energy America, Inc. The Department lacks sufficient knowledge to either admit or deny the other allegations contained in paragraph 2 and demands strict proof thereof.

3. During tax years ending December 31, 2008 and December 31, 2009 (the “Tax Years at Issue”), Mercuria maintained an office in Chicago, Illinois. The Chicago office subsequently closed and all of its activities and operations were transferred to Mercuria’s Houston office.

ANSWER: The Department admits that Mercuria maintained an office in Chicago, Illinois, during the Tax Years at Issue. However, the Department lacks sufficient knowledge to either admit or deny the other allegations contained in paragraph 3 and demands strict proof thereof.

4. Petitioner’s current mailing address is 20E Greenway Plaza, Suite 650, Houston, Texas, 77046.

ANSWER: Admit.

5. Petitioner’s FEIN is 45-0548659.

ANSWER: Admit.

6. Petitioner’s Illinois audit identification number for the Tax Years at Issue is A2095684224.

ANSWER: The Department’s admits that A2095684224 is the Petitioner’s “Audit Track” number for the Department’s audit conducted of Petitioner for the Tax Years at Issue.

7. Respondent, the Illinois Department of Revenue (the “Department”), is an agency of the state of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois.

ANSWER: Admit.

JURISDICTION

8. On or about November 10, 2014, the Department issued a Notice of Deficiency to Mercuria asserting additional tax due of \$11,957 (exclusive of interest and penalties) for the tax year ending December 31, 2008 (the “2008 Notice”). A copy of the 2008 Notice is attached as Exhibit A.

ANSWER: Admit.

9. On or about November 10, 2014, the Department issued a Notice of Deficiency to Mercuria asserting additional tax due of \$141,267 (exclusive of interest and penalties) for the tax year ending December 31, 2009 (the “2009 Notice”). A copy of the 2009 Notice is attached as Exhibit B.

ANSWER: Admit.

10. Both the 2008 Notice and the 2009 Notice (collectively, the “Notices of Deficiency”) present the same issues and the tax deficiencies assessed in the Notices of Deficiency result from the same Illinois audit (audit identification number A2095684224).

ANSWER: Admit.

11. The Notices of Deficiency amount to \$153,224 of assessed tax in the aggregate.

ANSWER: Admit.

12. This Tribunal has original jurisdiction over all Department determinations reflected on Notices of Deficiency where the aggregate amount at issue in multiple notices issued for the same audit period exceeds \$15,000, exclusive of penalties and interest. 35 ILCS §1010/1-45.

ANSWER: The Department admits that the aggregate amount at issue in the two Notices of Deficiency for the Tax Years at Issue exceeds \$15,000, exclusive of penalties and interest. However, whether this Tax Tribunal has jurisdiction over this matter is a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation (“Rule”) 310(b)(2) (86 Ill. Admin. Code §500.310). The Department admits the existence, force, and effect at all relevant times of the statute set forth or referenced in paragraph 12.

BACKGROUND

13. Mercuria is one of the world’s five largest independent energy traders.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 13 and demands strict proof thereof.

14. Mercuria’s core business is sourcing, supplying, and trading crude oil and refined petroleum products.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 14 and demands strict proof thereof.

15. Mercuria's commodities trading portfolio also includes biofuels, environmental products, natural gas and LNG, power, coal, iron ore and a range of other dry bulk commodities and agricultural products. **(this is on the TP's website).**

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 15 and demands strict proof thereof.

16. Mercuria has access to all traded energy and commodities markets from its main business hubs in Switzerland, China, Singapore, and the U.S.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 16 and demands strict proof thereof.

17. Mercuria conducts two types of transactions in the regular course of its trade or business: physical trading of commodities and financial transactions involving sales of derivatives and options.

ANSWER: Whether certain activities were conducted in the regular course of Mercuria's trade or business is a legal conclusion, a not material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Further, the Department lacks sufficient knowledge to either admit or deny the other allegations contained in paragraph 17 and demands strict proof thereof.

18. Transactions involving the physical sale of commodities include the sale of oil and other energy products that Mercuria owns and stores outside of Illinois.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 18 and demands strict proof thereof.

19. Mercuria's financial transactions include the sale of derivatives and options to the New York Mercantile Exchange (the "NYMEX"), which is currently owned by the Chicago Mercantile Exchange (the "CME").

ANSWER: The Department admits that NYMEX is currently owned by the CME. However, the Department lacks sufficient knowledge to either admit or deny the other allegations contained in paragraph 19 and demands strict proof thereof.

20. Mercuria's billing statements indicate a final sale to the NYMEX as its end customer.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 20 and demands strict proof thereof.

21. According to Mercuria's records, the NYMEX is the party to whom money is paid and received from and with whom all interactions relating to trades are conducted.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 21 and demands strict proof thereof.

22. The NYMEX is commercially domiciled in New York state and maintains a New York state billing address.

ANSWER: Paragraph 22 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Further, the Department lacks sufficient knowledge to either admit or deny any allegations contained in paragraph 22 and demands strict proof thereof.

23. Through the CME clearinghouse, the NYMEX “serves as the counterparty to every trade, becoming the buyer to each seller and the seller to each buyer, limiting credit risk and therefore mitigating the risk of default.” “CME Clearing Financial Safeguards” (2012), available at <http://www.cmegroup.com/clearing/files/financialsafeguards.pdf>.

ANSWER: Denied.

24. Mercuria does not make any trades with customers commercially domiciled in Illinois or with customers that maintain an Illinois billing address.

ANSWER: Paragraph 24 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Further, the Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 24 and demands strict proof thereof.

25. Mercuria qualifies as a “dealer” within the meaning of I.R.C. § 475.

ANSWER: Paragraph 25 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations in Paragraph 25 and demands strict proof thereof.

26. On Mercuria's federal returns for the Tax Years at Issue, Mercuria elected treatment as a "dealer" pursuant to I.R.C. § 475.

ANSWER: The Department admits that Mercuria Energy America, Inc. elected treatment as a "dealer" pursuant to I.R.C. § 475 for tax year ending December 31, 2009. The Department lacks sufficient knowledge to either admit or deny whether Mercuria elected treatment as a "dealer" pursuant to I.R.C. § 475 for the tax year ending December 31, 2008.

27. The Internal Revenue Service ("IRS") conducted an audit of Mercuria's federal income tax returns for the Tax Years at Issue.

ANSWER: Admit.

28. On or about March 23, 2012, the IRS determined that Mercuria qualified as a dealer pursuant to I.R.C. § 475 and approved Mercuria's election for treatment as a dealer under I.R.C. §475. A copy of the IRS's audit report for the Tax Years at Issue is attached as Exhibit C.

ANSWER: Denied.

MERCURIA'S ILLINOIS TAX FILINGS

29. Mercuria, along with its unitary subsidiaries, timely filed Illinois Income and Replacement Tax returns, and paid the tax shown due thereon, for Tax Years at Issue.

ANSWER: Admit.

30. An Illinois taxpayer's method of accounting is the same as the taxpayer's method of accounting for federal income tax purposes. 35 ILCS § 5/402.

ANSWER: Paragraph 30 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 30 and states that such statute speaks for itself.

31. An Illinois Income and Replacement Tax return must take into account items of income, deduction, and exclusion in the same manner as reflected on that taxpayer's federal income tax return. 35 ILCS § 5/403.

ANSWER: Paragraph 31 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 31 and states that such statute speaks for itself.

32. Illinois law provides that interest, net gains, and other items of income from intangible personal property earned by a "dealer," as defined in I.R.C. § 475, are in Illinois if the income or gain is received by the dealer's customer in Illinois. 35 ILCS § 5/304(a)(C-5)(iii)(a).

ANSWER: Paragraph 32 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 32 and states that such statute speaks for itself.

33. A customer of a dealer is in Illinois if the customer is a business entity with its commercial domicile in Illinois. 35 ILCS § 5/304(a)(3)(C-5)(iii)(a).

ANSWER: Paragraph 33 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 33 and states that such statute speaks for itself.

34. Unless the dealer has actual knowledge of the commercial domicile of a customer during the taxable year, the customer shall be deemed to be a customer in Illinois if the billing address of the customer, as shown in the records of the deal, is in Illinois. 35 ILCS § 5/304(a)(3)(C-5)(iii)(a).

ANSWER: Paragraph 34 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 34 and states that such statute speaks for itself.

35. In all other cases where a taxpayer is not classified as a dealer of intangible personal property under the Illinois Income Tax Act, a taxpayer's multistate income is sourced to Illinois based upon whether a greater proportion of the taxpayer's income-producing activity occurs within Illinois than in any other state, based on the costs of performance. 35 ILSC § 304(a)(3)(C-5)(iii)(b).

ANSWER: Paragraph 35 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 35 and states that such statute speaks for itself.

36. When reporting Illinois tax due for the Tax Years at Issue, Mercuria originally computed its tax due by excluding all receipts generated from the sale of its financial derivative products from Mercuria's sales factor numerator and denominator pursuant to 86 Ill. Admin. Code § 100.3380(c)(4).

ANSWER: Admit.

PROCEDURAL HISTORY

37. The Department conducted an audit for the combined Illinois Income and Replacement Tax returns filed by Mercuria for the Tax Years at Issue.

ANSWER: Admit.

38. As a result of the audit, on or about October 12, 2012, the Department issued a Notice of Proposed Deficiency (the "Proposed Deficiency") for Illinois Income and Replacement Tax for the Tax Years at Issue.

ANSWER: Admit.

39. The Proposed Deficiency claimed that an additional \$153,224 of tax was due to the Department for the Tax Years at Issue - - specifically, the total proposed tax deficiency for the 2008 tax year was \$11,957 and the total proposed tax deficiency for the 2009 tax year was \$141,267. In addition, proposed penalties and interest were assessed, resulting in an aggregate total Proposed Deficiency of \$189,417.

ANSWER: Admit.

40. In issuing the Proposed Deficiency, the Department improperly concluded that Mercuria is not a dealer and that the sourcing rules found in 35 ILCS § 5/304(a)(3)(C-5)(iii)(a) do not apply.

ANSWER: The Department admits that it concluded that Mercuria is not a dealer and that the sourcing rules found in 35 ILCS § 5/304(a)(3)(C-5)(iii)(a) do not apply. The Department's denies all other allegations contained in paragraph 40 and demands strict proof thereof.

41. Instead, the Department improperly determined that Mercuria must source its income according to the income-producing activity sourcing rules found in 35 ILCS § 5/304(a)(3)(C-5)(iii)(b) that apply to non-dealers.

ANSWER: The Department admits that it determined that Mercuria must source its income according to the income-producing activity sourcing rules found in 35 ILCS § 5/304(a)(3)(C-5)(iii)(b) that apply to non-dealers. The Department denies all other allegations contained in paragraph 41 and demands strict proof thereof.

42. Based upon the Department's improper application of the sourcing rules found in 35 ILCS 5/304(a)(3)(C-5)(iii), 100% of Mercuria's financial derivative sales were sourced to Illinois.

ANSWER: The Department admits that 100% of Mercuria's financial derivative sales were sourced to Illinois. The Department denies all other allegations contained in paragraph 42 and demands strict proof thereof.

43. On or about December 4, 2012, Mercuria filed a Request for Informal Conference Board (“ICB”) Review, Form ICB-1 to protest the entire amount reflected in the Proposed Deficiency for the Tax Years at Issue.

ANSWER: The Department admits that Mercuria participated in the Department’s ICB forum for the Tax Years at Issue. The Department lacks sufficient evidence to either admit or deny the other allegations contained in paragraph 43 and demands strict proof thereof.

44. On or about November 12, 2013, Mercuria submitted an Offer of Disposition of a Proposed Assessment or Claim Denial, Form ICB-2 offering to settle the Proposed Deficiency in exchange for foregoing its claim for refund for the Tax Years at Issue as calculated under 35 ILCS § 5/304(a)(3)(C-5)(iii).

ANSWER: The Department admits that Mercuria Offer of Disposition of a Proposed Assessment or Claim Denial, Form ICB-2 offering to settle the Proposed Deficiency for the Tax Years at Issue. The Department lacks sufficient knowledge to either admit or deny the other allegations contained in paragraph 44 and demands strict proof thereof.

45. Mercuria’s right to a refund arises because its originally filed returns excluded all receipts generated from the sale of financial derivative products from Mercuria’s Illinois sales factor numerator and denominator pursuant to 86 Ill. Admin. Code § 3380(c)(4). However, 35 ILCS § 304(a)(3)(C-5)(iii) would properly only exclude such receipts from the numerator, but not the denominator, thus reducing Mercuria’s Illinois apportionment factor and its resulting Income and Replacement Tax liability.

ANSWER: Paragraph 45 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the regulation set forth or referenced in paragraph 45.

46. On or about August 8, 2014, the ICB issued an Action Decision denying Mercuria's settlement offer and otherwise upholding the Proposed Deficiency.

ANSWER: The Department admits that the ICB issued its Action Decision on or about August 18, 2014.

47. On or about November 10, 2014, the Department issued the Notices of Deficiency. The Notices of Deficiency claimed that an additional \$18,140.94 of penalties and interest was due, bring the total deficiency assessment for the Tax Years at Issue to \$207,557.94 (the "Assessment").

ANSWER: Admit.

48. Mercuria timely files this Petition involving the jurisdiction of the Tax Tribunal.

ANSWER: Paragraph 47 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Rule 310(b)(2).

49. Mercuria seeks abatement of the entire Assessment amount -- \$207,557.94 -- for the reasons stated below.

ANSWER: The information in paragraph 49 is required by Rule 310(a)(1)(G), and therefore does not require an answer.

COUNT I

MERCURIA IS A “DEALER” UNDER I.R.C. § 475 AND MUST SOURCE ITS INCOME IN ACCORDANCE WITH 35 ILCS § 5/304(a)(3)(C-5)(iii)(a)

50. Mercuria hereby restates and realleges the allegations contained in paragraphs 1 through 49 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 49 as if fully set forth herein.

51. Mercuria, in the ordinary course of its business, regularly purchases from and regularly sells to the NYMEX intangible personal property in the form of commodities derivatives and options.

ANSWER: The Department lacks sufficient knowledge to either admit or deny whether Mercuria regularly purchases from and regularly sells to the NYMEX intangible personal property in the form of commodities derivatives and options and demands strict proof thereof. Further, whether Mercuria engages in the foregoing activity “in the ordinary course of its business” contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

52. Mercuria’s financial derivative activities qualify it as a dealer under I.R.C. § 475.

ANSWER: Paragraph 52 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

53. The IRS determined that Mercuria qualifies as a dealer under I.R.C. § 475 for the Tax Years at Issue.

ANSWER: Denied.

54. The Illinois Income Tax Act defers to federal law (I.R.C. § 475) in determining whether a taxpayer is a dealer of intangible personal property, providing:

In the case of interest, net gains (but not less than zero) and other items of income from intangible personal property, the sale is in this State if: (a) in the case of a taxpayer who is a dealer in the item of intangible personal property within the meaning of Section 475 of the Internal Revenue Code, the income or gain is received from a customer in this State.

35 ILCS § 5/304(a)(3)(C-5)(iii).

ANSWER: Paragraph 54 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referenced in paragraph 54.

55. Illinois courts have explained that administrative and compliance benefits, including predictability and certainty, result from the required conformity of Illinois income tax laws to the federal income tax laws. *See Wendy's International v. Hamer*, 996 N.E.2d 1250 (Ill. App. Ct. 2013).

ANSWER: Paragraph 55 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the judicial decision cited in paragraph 55.

56. On October 7, 2013, the Illinois Fourth Appellate Court held that the IRS's determination on audit that a company constituted an insurance company for federal income tax purposes meant that the company should have been treated as an insurance company for Illinois tax purposes. *Wendy's*, 996 N.E.2d 1250.

ANSWER: Paragraph 56 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the judicial decision cited in paragraph 55.

57. The IRS determined that Mercuria qualified as a dealer under I.R.C. § 475 and the Department's treatment of Mercuria as a non-dealer violates both Illinois and federal law.

ANSWER: Paragraph 57 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies all allegations contained in paragraph 57 and demands strict proof thereof.

58. A "dealer" sources income to Illinois if the customer is located in Illinois. The location of the customer is determined by "billing address of the customer, as shown in the records of the dealer, unless there is actual knowledge of the residence or commercial domicile of a customer." 35 ILCS § 5/304(a)(3)(C-5)(a) (emphasis added).

ANSWER: Paragraph 58 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department

admits the existence, force and effect at all relevant times of the statute set forth or referenced in paragraph 58.

59. Mercuria has no actual knowledge that any of its customers reside or are commercially domiciled in Illinois for the Tax Years at Issue.

ANSWER: The Department's lacks sufficient knowledge to admit or deny the allegation contained in paragraph 59 and demands strict proof thereof.

60. According to Mercuria's true and accurate records, the NYMEX, Mercuria's customer, is commercially domiciled in New York and its billing address is in New York.

ANSWER: Whether Mercuria's customer is commercially domiciled in New York is a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Further, the Department's lacks sufficient knowledge to admit or deny the factual allegations contained in paragraph 60 and demands strict proof thereof.

61. Because Mercuria qualifies as a dealer under I.R.C. § 475, it must source its sales of intangible personal property to the location of its customer in New York; Mercuria has no customers located in Illinois.

ANSWER: Paragraph 61 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies all allegations contained in paragraph 61 and demands strict proof thereof.

62. The Department's determination that Mercuria must source sales based on the location of its income producing activity violates Illinois law which applies a specific sourcing rule for business income earned by dealers of intangible personal property.

ANSWER: Paragraph 62 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b)(2).

WHEREFORE, the Department respectfully prays that this Tax Tribunal enter an order finding that:

- a. Mercuria is required to apportion its income pursuant to 35 ILCS § 5/304(a)(3)(C-5)(iii)(b);
- b. The Assessment, along with related penalties and interest, must be upheld and finalized; and
- c. This Tax Tribunal deny all other relief sought by Mercuria.

COUNT II
THE UNIFORMITY CLAUSE OF THE ILLINOIS CONSTITUTION PROHIBITS
ILLINOIS FROM TREATING MERCURIA AS ANYTHING BUT A DEALER

63. Mercuria hereby restates and realleges the allegations contained in paragraphs 1 through 49 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 49 as if fully set forth herein.

64. The uniformity clause of the Illinois Constitution prohibits the Department from treating Mercuria as anything but a dealer of intangible personal property for Illinois tax purposes. *See Wendy's*, 996 N.E.2d 1250 (referencing Ill. Const. art. IX, § 2).

ANSWER: Paragraph 64 contains a legal conclusion, not a material allegation of fact and therefore does not require an answer pursuant to Rule 310(b)(2).

65. In classifying subjects of taxes, the Illinois uniformity clause provides that “the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly.” Ill. Const. art. IX, § 2.

ANSWER: Paragraph 65 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

66. Taxpayers that qualify as “dealers” under federal law are treated as dealers for purposes of the income apportionment provisions of Illinois law. 35 ILCS § 5/304(a)(3)(C-5)(iii).

ANSWER: Paragraph 66 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

67. To survive scrutiny under the uniformity clause, a classification “must (1) be based on a real and substantial difference [...] and (2) bear some reasonable relationship to the object of the legislation or policy.” *Empress Casino Joliet Corp. v. Giannoulis*, 231 Ill.2d 62, 72 (Ill. 2008).

ANSWER: Paragraph 67 contains a legal conclusion, not a material allegation of fact and therefore does not require an answer pursuant to Rule 310(b)(2).

68. The party attacking a tax classification is not required to negate every conceivable basis which might support it. Instead, the party challenging the classification has the burden of persuading the court that the justification offered is unsupported by the facts or insufficient as a matter of law. *Id.*

ANSWER: Paragraph 68 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b)(2).

69. By treating Mercuria as a non-dealer, the Department directly contradicts the Illinois Constitution's express requirement that subjects within each class be taxed uniformly.

ANSWER: Paragraph 69 a contains legal conclusion, not a material allegation of fact and therefore does not require an answer pursuant to Rule 310(b)(2).

70. The Department allows other Illinois Income and Replacement taxpayers who are dealers under I.R.C. § 475 to utilize the sourcing rule required in 35 ILCS § 5/304(a)(3)(C-5)(iii)(a).

ANSWER: The Department admits that taxpayers that have been determined to be dealers under I.R.C. § 475 are required to utilize the sourcing rule in 35 ILCS § 5/304(a)(3)(C-5)(iii)(a). However, the Department denies that Mercuria is a "dealer" under I.R.C. § 475.

71. Mercuria qualifies as a dealer for purposes of the federal law. To classify Mercuria as a non-dealer would effectively subject taxpayers of the same federal classification to different Illinois tax treatment without justification.

ANSWER: Paragraph 71 contains legal conclusions, not material allegations of fact and therefore does not require an answer pursuant to Rule 310(b)(2).

72. Mercuria has provided extensive proof that the Department's classification of Mercuria as a non-dealer is unsupported by the facts and is incorrect as a matter of law.

ANSWER: Denied.

73. There is no real and substantial difference between Mercuria and any other dealer as defined by I.R.C. § 475.

ANSWER: Denied.

74. There is no legislation or policy that requires Mercuria to be treated as a non-dealer for Illinois apportionment purposes despite being recognized as a dealer for federal tax purposes.

ANSWER: Denied.

75. The Department's treatment of Mercuria as a non-dealer for Illinois tax purposes violates the uniformity clause of the Illinois Constitution.

ANSWER: Paragraph 75 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

WHEREFORE, the Department respectfully prays that this Tax Tribunal enter an order finding that:

- a. Mercuria is not required to apportion its income pursuant to 35 ILCS § 5/304(a)(3)(C-5(iii)(a), but instead is required to apportion its income pursuant to 35 ILCS 5/304(a)(3)(C-5)(iii)(b);
- b. The Assessment, along with related penalties and interest, must be upheld and finalized; and
- c. This Tax Tribunal deny all other relief sought by Mercuria.

COUNT III
PENALTIES MUST BE ABATED FOR REASONABLE CAUSE

76. Mercuria hereby restates and realleges the allegations contained in paragraphs 1 through 49 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 49 as if fully set forth herein.

77. Any penalties assessed must be abated for reasonable cause.

ANSWER: Paragraph 77 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). However, the Department denies any allegations contained in paragraph 77 and demands strict proof thereof.

78. The Department has assessed late payment penalties in the Notices of Deficiency.

ANSWER: Admit.

79. Under Illinois law, no penalties shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 ILCS § 735/3-8.

ANSWER: Paragraph 77 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

80. Under Illinois regulations, “the most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill. Admin. Code § 700.400(b).

ANSWER: Paragraph 80 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: _____
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**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

MERCURIA ENERGY COMPANY LLC)	
AND SUBSIDIARIES,)	
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Defendant)	

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

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Please take notice that the undersigned Representative for the Illinois Department of Revenue (the "Department") certifies that, on February 20, 2015, he served the Department's Answer to Mercuria Energy Company LLC & Subsidiaries' Petition by electronic mail at the electronic mail address shown above at the time shown on the electronic transmission confirmation.

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