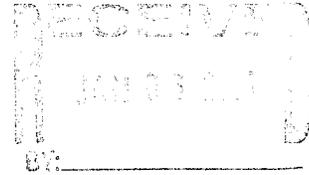


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

MERCURIA ENERGY COMPANY LLC AND )  
SUBSIDIARIES, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS DEPARTMENT OF REVENUE )  
 )  
Respondent. )

Case No. \_\_\_\_\_



15774

**PETITION**

Petitioner, Mercuria Energy Company LLC, individually and on behalf of its unitary subsidiaries, by and through its attorneys, Baker & McKenzie LLP, complains of Respondent, Illinois Department of Revenue, as follows:

**PARTIES**

1. Petitioner, Mercuria Energy Company LLC and Subsidiaries ("Mercuria"), are privately-owned companies of Mercuria Energy Group Ltd.
2. Mercuria Energy Company LLC is a holding company of various US entities.
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.
4. Petitioner's current mailing address is 20E Greenway Plaza, Suite 650, Houston Texas, TX 77046.
5. Petitioner's FEIN is 45-0548659.
6. Petitioner's Illinois audit identification number for the Tax Years at Issue is A2095684224.

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.

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

### **BACKGROUND**

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

14. Mercuria's core business is sourcing, supplying, and trading crude oil and refined petroleum products.
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.
16. Mercuria has access to all traded energy and commodities markets from its main business hubs in Switzerland, China, Singapore, and the US.
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.
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.
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").
20. Mercuria's billing statements indicate a final sale to the NYMEX as its end customer.
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.
22. The NYMEX is commercially domiciled in New York state and maintains a New York state billing address.
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>.

24. Mercuria does not make any trades with customers commercially domiciled in Illinois or with customers that maintain an Illinois billing address.
25. Mercuria qualifies as a "dealer" within the meaning of I.R.C. § 475.
26. On Mercuria's federal returns for the Tax Years at Issue, Mercuria elected treatment as a "dealer" pursuant to I.R.C. § 475.
27. The Internal Revenue Service (the "IRS") conducted an audit of Mercuria's federal income tax returns for the Tax Years at Issue.
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.

#### **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.
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.
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.
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)(3)(C-5)(iii)(a).

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).

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 dealer, is in Illinois. 35 ILCS § 5/304(a)(3)(C-5)(iii)(a).

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 ILCS § 5/304(a)(3)(C-5)(iii)(b).

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).

### **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.

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.

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.
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.
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.
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.
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.
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).
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 § 100.3380(c)(4). However, 35 ILCS § 5/304(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.

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

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").

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

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

### **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.

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.

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

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

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).

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).

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.

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.

58. A "dealer" sources income to Illinois if the customer is located in Illinois. The location of the customer is determined by "the 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)(iii)(a) (emphasis added).

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

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.

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.

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.

WHEREFORE, Mercuria prays the Tax Tribunal find and enter an order determining that Mercuria is entitled to apportion its income pursuant to 35 ILCS § 5/304(a)(3)(C-5)(iii)(a) and that the Assessment, along with related penalties and interest, must be abated in its entirety, along with such other and further relief as the Tax Tribunal deems appropriate in this matter.

## 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.

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).

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.

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

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.

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

WHEREFORE, Mercuria prays the Tax Tribunal find and enter an order determining that The uniformity clause of the Illinois Constitution, Ill. Const. art. IX, § 2 compels the Department to apportion Mercuria's income pursuant to 35 ILCS § 5/304(a)(3)(C-5)(iii)(a), and that the Assessment, along with related penalties and interest, must be abated in its entirety, along with such other and further relief as the Tax Tribunal deems appropriate in this matter.

### **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.

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

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

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.

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).

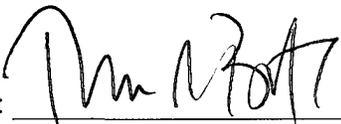
81. A taxpayer is considered to have made a good faith effort to determine and file and pay his tax liability if it "exercised ordinary business care and prudence in doing so." 86 Ill. Admin. Code § 700.400(c).
82. The taxpayer's filing history is also considered in determining whether the taxpayer acted in good faith. 86 Ill. Admin. Code § 700.400(d).
83. Mercuria made a good faith effort to determine its proper tax liability and to file and pay its proper liability in a timely fashion.
84. Mercuria exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper liability in a timely fashion.
85. Mercuria has a history of timely filing Illinois corporate income tax returns and paying Illinois Income and Replacement Tax in a timely manner.
86. The late payment penalties imposed by the Department must be abated for reasonable cause.

WHEREFORE, Mercuria prays the Tax Tribunal find and enter an order determining that any penalties assessed by the Department be abated in full and such other and further relief as the Tax Tribunal deems appropriate in this matter.

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Mercuria Energy Company LLC

Date: January 6, 2014

By:   
An Attorney for Petitioner

Theodore R. Bots (theodore.bots@bakermckenzie.com)  
Matthew S. Mock(matthew.mock@bakermckenzie.com)  
David A. Hemmings (drew.hemmings@bakermckenzie.com)  
BAKER & McKENZIE LLP  
300 East Randolph Street #5000  
Chicago, Illinois 60601  
(312) 861-8000  
Attorney No. 90080  
3431722-v11\

# **EXHIBIT A**



# Statement

Date: November 10, 2014  
Name: MERCURIA ENERGY COMPANY, LLC AND SUBSIDIARIES  
Taxpayer ID: 45-0548659  
Letter ID: CNXXX11398919369

## Reasons for deficiency

We have adjusted your subtraction modification for Illinois Special Depreciation based on our analysis of assets placed in service. Ref: IITA Section 203 (b) (2) (T)

We adjusted your addition modification for Illinois Income Tax, Illinois Replacement Tax, or both based on a review of your federal 1120, Line 17.

[35 ILCS 5/203(b)(2)(B), (c)(2)(C), (d)(2)(B)]

We adjusted your sales everywhere to include factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported.

[86 IL Adm. Code 100.3370(a)(1)]

We adjusted your Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported.

[86 IL Adm. Code 100.3370(a)(1)]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2010, through November 8, 2010, your penalty and interest amounts may be doubled. [86 Ill. Admin. Code 520/101(b)]

## Penalties

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%.

[35 ILCS 735-1/3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

## Interest

Interest on tax in the amount of \$3,958.58 has been computed through November 10, 2014.

# Statement

Date: November 10, 2014  
Name: MERCURIA ENERGY COMPANY, LLC AND SUBSIDIARIES  
Taxpayer ID: 45-0548659  
Letter ID: CNXXX11398919369

## Computation of deficiency

Reporting Period: 31-Dec-2008

Income or loss	
Federal taxable income	\$4,341,594.00
Net operating loss deduction	\$0.00
Income tax and replacement tax deduction	\$95,051.00
Illinois bonus depreciation addition	\$237,765.00
Other additions	\$0.00
Income or loss	\$4,674,410.00
Base income or loss	
Illinois bonus depreciation subtraction	\$2,201.00
Total subtractions	\$2,201.00
Base income or net loss	\$4,672,209.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$4,672,209.00
Apportionment formula	
Total sales everywhere	\$219,994,293.00
Total Illinois sales	\$8,209,535.00
Apportionment factor	0.037317
Business income/loss apportionable to IL	\$174,353.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$174,353.00
Net income	
Base income or net loss	\$174,353.00
IL net loss deduction (NLD)	\$0.00
Net income	\$174,353.00
Net replacement tax	
Replacement tax	\$4,359.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$4,359.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$4,359.00
Net income tax	
Income tax	\$8,369.00
Recapture of investment credits	\$0.00

# Statement

Date: November 10, 2014  
Name: MERCURIA ENERGY COMPANY, LLC AND SUBSIDIARIES  
Taxpayer ID: 45-0548659  
Letter ID: CNXXX11398919369

Income tax before credits	\$8,369.00
Income tax investment credits	\$0.00
Net income tax	\$8,369.00
Refund or balance due	
Net replacement tax	\$4,359.00
Net income tax	\$8,369.00
Total net income and replacement tax due	\$12,728.00
Minus tax previously assessed	-\$771.00
Total tax deficiency	\$11,957.00
UPIA-5 late-payment penalty (Audit)	\$4,782.80
Plus interest on tax through November 10, 2014	\$3,958.58
Total deficiency	* \$20,698.38
If you intend to pay under protest, you must pay this total deficiency amount.	
Balance due	* \$20,698.38

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## **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 to 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.

# **EXHIBIT B**



# Statement

Date: November 10, 2014  
Name: MERCURIA ENERGY COMPANY, LLC AND SUBSIDIARIES  
Taxpayer ID: 45-0548659  
Letter ID: CNXXX194325X96X4

## Reasons for deficiency

We have adjusted your subtraction modification for Illinois Special Depreciation based on our analysis of assets placed in service. Ref: IITA Section 203 (b) (2) (T)

We have corrected computational errors in the calculation of your Illinois' subtraction modifications. Ref: IITA Section 1501 (a) (12) (A)

We have adjusted your addition modification for Illinois Special Depreciation based on our analysis of U.S. 1120, form 4562, Line 14. Ref: IITA Section 203 (b) (2) (E-10)

We adjusted your sales everywhere to include factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported.  
[86 IL Adm. Code 100.3370(a)(1)]

We adjusted your Illinois sales to include all factorable receipts on federal 1120, Lines 1 through 10, over federal 1120, Line 1, as originally reported.  
[86 IL Adm. Code 100.3370(a)(1)]

## Penalties

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%.  
[35 ILCS 735-3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

## Interest

Interest on tax in the amount of \$17,339.16 has been computed through November 10, 2014.

# Statement

Date: November 10, 2014  
Name: MERCURIA ENERGY COMPANY, LLC AND SUBSIDIARIES  
Taxpayer ID: 45-0548659  
Letter ID: CNXXX194325X96X4

## Computation of deficiency

Reporting Period: 31-Dec-2009

Income or loss	
Federal taxable income	\$13,917,201.00
Net operating loss deduction	\$0.00
Illinois bonus depreciation addition	\$1,219,930.00
Other additions	\$0.00
Income or loss	\$15,137,131.00
Base income or loss	
Fed-taxed refund of IL income and rep. tax	\$25,229.00
Illinois bonus depreciation subtraction	\$88,904.00
Total subtractions	\$114,133.00
Base income or net loss	\$15,022,998.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$15,022,998.00
Apportionment formula	
Total sales everywhere	\$274,001,676.00
Total Illinois sales	\$36,302,013.00
Apportionment factor	0.132488
Business income/loss apportionable to IL	\$1,990,367.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$1,990,367.00
Net income	
Base income or net loss	\$1,990,367.00
IL net loss deduction (NLD)	\$0.00
Net income	\$1,990,367.00
Net replacement tax	
Replacement tax	\$49,759.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$49,759.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$49,759.00
Net income tax	
Income tax	\$95,538.00
Recapture of investment credits	\$0.00

# Statement

Date: November 10, 2014

Name: MERCURIA ENERGY COMPANY, LLC AND SUBSIDIARIES

Taxpayer ID: 45-0548659

Letter ID: CNXXX194325X96X4

Income tax before credits	\$95,538.00
Income tax investment credits	\$0.00
Net income tax	\$95,538.00
Refund or balance due	
Net replacement tax	\$49,759.00
Net income tax	\$95,538.00
Total net income and replacement tax due	\$145,297.00
Minus tax previously assessed	-\$4,030.00
Total tax deficiency	\$141,267.00
UPIA-5 late-payment penalty (Audit)	\$28,253.40
Plus interest on tax through November 10, 2014	\$17,339.16
Total deficiency	* \$186,859.56
If you intend to pay under protest, you must pay this total deficiency amount.	
Balance due	* \$186,859.56

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## **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 to 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.

# **EXHIBIT C**

Form **5701**  
(Rev. December 2006)

Department of the Treasury - Internal Revenue Service

# Notice of Proposed Adjustment

Name of taxpayer  
MERCURIA ENERGY CORPORATION LL

Issue No.  
57012

Name and title of person to whom delivered  
Gill, Kelli

Date  
3/13/2012

Entity for this proposed adjustment  
MERCURIA ENERGY CORPORATION LL

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

Years	Amount	Account or return line	SAIN NO.	Issue Code
200812	\$5,748,382.00	/IRS Form 1120/Line 1a	410	00475.07-00
200912	\$36,647,765.00	IRS FORM 1120/LINE 1A	410	00475.07-00

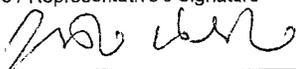
Reasons for Proposed Adjustment *(If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (Explanation of Items).)*

SEE ATTACHED FORMS 886-As

Taxpayer's / Representative's Action:

Agreed  Agreed in Part  Disagreed  Have additional information; will submit by:

Taxpayer's / Representative's Signature



**Jarek Kozlowski**  
**Treasurer**

Date

03/23/12

If Disagreed in Part or in Full - Check here for consideration of Fast Track Settlement

Taxpayer  IRS

Team Manager  
Olivieri, Louis M

Date

**EXPLANATIONS OF ITEMS**

Name of taxpayer

Tax Identification Number

Year/Period ended

MERCURIA ENERGY COMPANY LLC & SUBS.

45-0548659

200812 and 200912

	200812	200912
CAPITAL GAINS PER THE RETURN	\$ 5,748,382	\$ 36,647,765
CAPITAL GAINS PER THE AUDIT	-0-	-0-
PROPOSED ADJUSTMENT TO CG	(\$5,748,382)	(\$ 36,647,765)
INCREASE TO ORDINARY INCOME	\$5,748,382	\$ 36,647,765

**ISSUE:**

Should the gains and losses as reported on the Schedule D of the 1120 be recharacterized as ordinary income and losses or left as capital gains and losses?

**FACTS:**

Mercuria Energy Company LLC is one of the companies of the Mercuria Energy Group Ltd located in Geneva, Switzerland. The LLC per the consolidated tax return is a holding company with no sales income and minimum activity. Almost all the income is included in Mercuria Energy Trading, Inc. per the consolidate tax return.

Mercuria is a privately-owned international group of companies active over a wide spectrum of global energy markets including crude oil and refined petroleum products, natural gas, power, coal, biodiesel, vegetable oils and carbon emissions. It is one of the world's five largest independent energy traders. It is committed to trading and operational excellence with exceptional track record of risk management. Mercuria's outstanding performance is attracting some of the best talent in the commodity and financial world. In addition to its trading core, it has upstream and downstream assets ranging from oil reserves in Argentina, Canada and the US to oil and products terminals in Europe and China, a substantial investment in the coal mining industry and a bio fuels plant.

In 200812 and 200912 the taxpayer reported a net capital gain on line eight of the 1120 in the amounts of \$5,748,382 \$36,647,765 respectively. These amounts were traced to line 14 of the Schedule D of the 1120s. These amounts were then further traced to the Form 6781 line five. The net amount was the result of Section 1256 unrealized gains and section 1256 realized losses. The net of this amount was allocated per Section 1256 as 40% short term net capital gain and 60% long term net capital gain. There was no carry forward of any capital losses and no carry back of capital losses from or to any other tax years.

The taxpayer attached to the return two elections one made under IRC section 475(e) and the other under IRC section 475(f) as follows:(copies also attached)

"Pursuant to Rev. Proc. 99-17, Section 5.04, Mercuria Energy Company, LLC and Subsidiaries hereby elects under section 475(e) of the Internal Revenue Code to account for all its commodities (as defined in section 475(e)(2)) on the mark to market method beginning with its taxable year ending December 31, 2008. The commodities ealer election under section 475(e) applies to the Mercuria Energy Company, LLC and Subsidiaries' trade or business of dealing in commodities."

"Pursuant to Rev. Proc. 99-17, Section 5.04, Mercuria Energy Company, LLC and Subsidiaries hereby elects under section 475(f) of the Internal Revenue Code to account for all of its trading of securities and commodities on the mark to market method beginning with its taxable year ending December 31, 2008. The commodities and securities trader election under section 475(f) applies to the Mercuria Energy Company, LLC and Subsidiaries' trade or business of trading securities and commodities."

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended
MERCURIA ENERGY COMPANY LLC & SUBS.	45-0548659	200812 and 200912

**TAX LAW:**

IRC section 1256(a) states the general rule as, any IRC section 1256 contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last day of such year. IRC section 1256 also states that any gain or loss with respect to a 1256 contract shall be treated as 40% short-term capital gain or loss and 60% long-term capital gain or loss. IRC section 1256 defined a section 1256 contract as any regulated futures contract, any foreign currency contract, any non-equity option and any dealer securities futures contracts. The taxpayer does engage in futures contracts transactions in the audit year in its regular business activities. IRC section 1256(f)(3) states that in general, gains or losses from trading section 1256 contracts shall be treated as gains or losses from the sale of a capital asset. The above is how the taxpayer reported its section 1256 contract gains and losses on the tax return. This is how they should have been reported except for the following IRC section 475 elections made by the taxpayer.

IRC section 475 states as the general rule any security which is inventory in the hands of the taxpayer, classified as a dealer, shall be included in inventory at its fair market value. If the taxpayer qualifies as a dealer in commodities it can make an election under IRC section 475(e) without the consent of the Secretary. Once this election is made it shall apply to the taxable year for which it was made and all subsequent taxable years unless revoked with the consent of the Secretary. The taxpayer made the election and attached it to the return.

IRC section 475(f) states that in the case of a person who is engaged in a trade or business as a trader in commodities and who elects to have this IRC section apply to such trade or business shall recognize the gain or loss on any commodity held in connection with such trade or business at the close of any taxable year as if such commodity were sold for its fair market value on the last business day of such taxable year. Any gain or loss shall be taken into account for such taxable year. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary. The taxpayer made the election and attached it to the return.

IRC section 475(d)(3) defines the character of the gain or loss on the transactions made above. The code also states that in general, any gain or loss with respect to a security (or commodity) shall be treated as ordinary income or loss.

**ARGUMENT:**

Although the taxpayer correctly reported the gains and losses on the tax return per IRC section 1256, the taxpayer chose to make the elections under IRC section 475 that allowed the taxpayer to report the gains and losses as ordinary gains and losses instead of treating them as capital gains and losses per IRC section 1256. The taxpayer has agreed to the treatment of the gains and losses as ordinary instead of capital. Although the character will change, there is no tax effect for this audit tax year or for the 200912 and the taxpayer has stated that the correction was made on the 201012 tax year. For corporations, capital gains are taxed at ordinary tax rates. Also there was no capital loss carry overs or carry backs for which the capital gains could offset.

**TAXPAYER' POSITION:**

As stated above, the taxpayer agrees to the adjustments.

**CONCLUSION:**

Applying the law to the facts of the case, based on the information and documentation provided by the taxpayer, the amount of capital gains reported per the tax returns were recharacterized to ordinary income from capital gains but for our audit years this change had no tax effect. In our case the capital gains were taxed at ordinary rates and will continue to be taxed at the same rates after the recharacterization. There were no net capital loss carrybacks or carryovers for our years or the subsequent years so no capital loss limitations are at issue

Form **5701**  
(Rev. December 2006)

Department of the Treasury - Internal Revenue Service

# Notice of Proposed Adjustment

Name of taxpayer  
MERCURIA ENERGY CORPORATION LL

Issue No.  
57011

Name and title of person to whom delivered  
Gill, Kelli

Date  
03/13/2012

Entity for this proposed adjustment  
MERCURIA ENERGY CORPORATION LL

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Years	Amount	Account or return line	SAIN NO.	Issue Code
200812	(\$5,748,382.00)	Capital Gains Schedule D line 14	408	00702.01-01
200912	(\$36,647,765.00)	Capital Gains Schedule D line 14	408	00702.01-01

Reasons for Proposed Adjustment (If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (Explanation of Items).)

SEE THE ATTACHED FORMS 886-As

Taxpayer's / Representative's Action:

Agreed    Agreed in Part    Disagreed    Have additional information; will submit by:

Taxpayer's / Representative's Signature



**Jarek Kozlowski**  
**Treasurer**

Date

03/23/12

If Disagreed in Part or in Full - Check here for consideration of Fast Track Settlement

Taxpayer    IRS

Team Manager  
Olivieri, Louis M

Date

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended	
MERCURIA ENERGY COMPANY LLC & SUBS.	45-0548659	200812 and 200912	

	200812	200912
CAPITAL GAINS PER THE RETURN	\$ 5,748,382	\$ 36,647,765
CAPITAL GAINS PER THE AUDIT	-0-	-0-
PROPOSED ADJUSTMENT TO CG	<u>(\$5,748,382)</u>	<u>(\$ 36,647,765)</u>
INCREASE TO ORDINARY INCOME	\$5,748,382	\$ 36,647,765

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**ARGUMENT:**

Although the taxpayer correctly reported the gains and losses on the tax return per IRC section 1256, the taxpayer chose to make the elections under IRC section 475 that allowed the taxpayer to report the gains and losses as ordinary gains and losses instead of treating them as capital gains and losses per IRC section 1256. The taxpayer has agreed to the treatment of the gains and losses as ordinary instead of capital. Although the character will change, there is no tax effect for this audit tax year or for the 200912 and the taxpayer has stated that the correction was made on the 201012 tax year. For corporations, capital gains are taxed at ordinary tax rates. Also there was no capital loss carry overs or carry backs for which the capital gains could offset.

**TAXPAYER' POSITION:**

As stated above, the taxpayer agrees to the adjustments.

**CONCLUSION:**

Applying the law to the facts of the case, based on the information and documentation provided by the taxpayer, the amount of capital gains reported per the tax returns were recharacterized to ordinary income from capital gains but for our audit years this change had no tax effect. In our case the capital gains were taxed at ordinary rates and will continue to be taxed at the same rates after the recharacterization. There were no net capital loss carrybacks or carryovers for our years or the subsequent years so no capital loss limitations are at issue