

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

OZINGA READY MIX CONCRETE, INC., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 Defendant. )

No.

RECEIVED  
MAR 20 2018  
BY: \_\_\_\_\_  
187736

NOTICE OF FILING

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

PLEASE TAKE NOTICE that on the 20th day of March, 2018, we filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, IL 60601, Ozinga Ready Mix Concrete's **Petition**, a copy of which accompanies this notice and is served on you herewith.

Respectfully submitted,

**Ozinga Ready Mix Concrete, Inc.,**

**Petitioner**

By: David A. Hughes  
One of Its Attorneys

David A. Hughes (dhughes@hmlaw.com)  
David W. Machemer (dmachemer@hmlaw.com)  
HORWOOD MARCUS & BERK CHARTERED  
500 W. Madison Street, Suite 3700  
Chicago, IL 60661  
Phone: (312) 606-3200

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

OZINGA READY MIX CONCRETE, INC., )  
)  
Petitioner, )  
)  
v. )  
)  
THE ILLINOIS DEPARTMENT OF REVENUE, )  
)  
Defendant. )

No. RECEIVED  
MAR 20 2013  
BY: \_\_\_\_\_  
181136

PETITION

Ozinga Ready Mix Concrete, Inc., (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, and pursuant to Section 1-50 of the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-50), complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

1. For the tax periods ending January, 2015 through June, 2017 (“Periods in Issue”), Petitioner was an Illinois corporation whose principal business address was 19001 Old LaGrange Road, Suite 300, Mokena, Illinois 60448-8013.
2. Unless otherwise stated, all of the following allegations relate to the Periods in Issue.
3. Petitioner is represented by David A. Hughes and David W. Machemer of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3212 or dhughes@hmblaw.com; and dmachemer@hmblaw.com or 312-242-3302, respectively.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

5. The Department has authority to administer and enforce the provisions of the Illinois Motor Fuel Tax Law. 20 ILCS 2505/2505-20.

### **NOTICES**

6. Petitioner received two Notices of Tentative Denial of Claim dated February 2, 2018 in the amount of \$46,363.68 for the reporting periods January, 2015 through May, 2015, and dated January 23, 2018 in the amount of \$329,233.96 for the reporting periods June, 2015 through June, 2017 (collectively referred to as “Notices”). In sum, the Department denied Petitioner’s claims for refund in the amount of \$375,597.64 for the Periods in Issue. The Notices are attached hereto as Exhibit A.

### **JURISDICTION**

7. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100 and the Illinois Motor Fuel Tax Law (“MFT”), 35 ILCS 505/1 through 35 ILCS 505/21.

8. The Notices deny refund claims in an aggregate amount in excess of \$15,000.

9. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notices.

## **BACKGROUND**

10. Petitioner is a family-owned business which manufactures and distributes ready mix concrete to customers in Illinois, Indiana, Michigan, and Wisconsin.

11. Petitioner often delivers the ready mix concrete directly to the customer's jobsite using state-of-the-art ready mix trucks that are powered by compressed natural gas ("CNG").

12. Petitioner has 125 CNG powered ready mix trucks in its fleet. ("Fleet").

13. Petitioner's Fleet significantly impacts the environment in a positive way by reducing the amount of harmful byproducts as compared to motor vehicles powered by traditional motor fuels and by reducing noise pollution.

14. Petitioner's Fleet, for example, releases approximately 40% less CO<sub>2</sub> than diesel fuel.

### Compressed Natural Gas or "CNG"

15. CNG is a combustible gas that exists in a gaseous state at 60 degrees Fahrenheit and 14.7 psi (atmospheric pressure at sea level).

16. CNG combustion has less environmental impact as compared to traditional motor fuels such as gasoline and diesel because the CNG combustion produces fewer undesirable gases (e.g. carbon dioxide, unburned hydrocarbons, carbon monoxide, nitrogen oxides, sulfur oxides).

17. CNG is made by compressing natural gas to less than 1 percent of the volume it occupies at standard atmospheric pressure.

18. Prior to compression, natural gas is not a liquid at 14.7 psi, and it never becomes a liquid at any point when compressed through the compression process.

19. The CNG used by Petitioner never becomes a liquid during the compression process, or at any time prior to the Petitioner's possession or use.

20. CNG does not become a liquid at any point during Petitioner's use.

21. CNG is not a liquid natural gas.

22. CNG has a narrow range of flammability (5-15 percent) and it requires a high ignition temperature of 1,200 degrees Fahrenheit as compared to gasoline, which requires a temperature of 600 degrees Fahrenheit.

#### Applicable Regulations and Law

23. During the Periods in Issue, Section 2 of the Illinois MFT imposed a tax "on all motor fuel used in motor vehicles operating on the public highways...of this State." 35 ILCS 505/52(a) (Lexis 2015).

24. During the Periods in Issue, the MFT defined "motor fuel" as "all volatile and inflammable *liquids* produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles." 35 ILCS 505/1.1 (Lexis 2015). The definition of "motor fuel" also included "special fuels" as defined in section 1.13 of the Illinois MFT. *Id.*

25. During the Periods in Issue, the Illinois MFT defined "Special Fuel" as "all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline...or combustible gases as defined in Section 5, example (B), of this Act." 35 ILCS 505/1.13 (Lexis 2015)

26. During the Periods in Issue, Section 5, example (B), of the Illinois MFT stated, "all combustible gases which exist in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute including, but not limited to, liquefied petroleum gases used for highway purposes." 35 ILCS 505/5 (Lexis 2015).

27. During the Years in Issue, Section 17 of the Illinois MFT stated the "purpose of sections 2 and 13a of this Act is...to impose a tax upon the privilege of operating each motor

vehicle...such tax to be based upon the consumption of motor fuel in such motor vehicle...” 35 ILCS 505/17 (Lexis 2015).

28. In August, 2014, the Department amended its motor fuel tax regulations so that, for the first time, the Department interpreted the Illinois MFT as applying to the use of CNG. 86 ILL. Admin. Code Section 500.200(c) (2014).

29. The amended regulations supplemented sections 500.100 and 500.200 of the Department’s motor fuel tax regulations.

30. The amended regulation defined “gallon” to mean “in addition to its ordinary meaning, its equivalent in a capacity of measurement of substance in a gaseous state (Section 1.8 of the Law). For purposes of this Part, a gallon is equal to a liquid measurement of 4 quarts or 3.785 liters.” 86 Ill. Admin. Code 500.100 (2014).

31. The amended regulation also identified the basis and rate of tax applicable to CNG, as follows:

Compressed natural gas is subject to tax at the rate established in subsection (a)(1). However, because compressed natural gas cannot be measured in gallons it must be converted to gallons using a conversion factor. For purposes of calculating tax under the Motor Fuel Tax Law, a gallon of compressed natural gas means a quantity of compressed natural gas equal to 126.67 cubic feet of natural gas at 60 degrees Fahrenheit and one atmosphere of pressure. In the alternative, it means a quantity of compressed natural gas that weighs 5.66 pounds.

32. The amended regulation does not reference any legislative amendment to the Illinois MFT.

33. On June 30, 2017, the Illinois General Assembly passed Public Act 100-0009 which expressly subjects CNG to the Illinois MFT, for the first time, by amending section 2 of the Act.

34. Effective July 1, 2017, section 2 of the Illinois MFT was amended to state: "...the rate of tax imposed in this paragraph, including the tax on compressed natural gas, shall be 19 cents per gallon." 35 ILCS 505/2.

35. Public Act 100-0009 amended the Illinois MFT to specifically reference CNG, including §§ 1.8, 1.8A, 1.8B, 1.13C.

36. Prior to Public Act 100-0009, CNG was not mentioned in the Illinois MFT, including, but not limited to, the sections of the Illinois MFT referenced in ¶¶34 and 35.

37. During the Periods in Issue, Petitioner reported its CNG usage to the Department on a monthly basis, and self-assessed and paid the motor fuel tax.

38. During the Periods in Issue, the Department had no tax return forms with which to report CNG usage.

39. For the Periods of January, 2015 through May, 2015, Petitioner remitted its usage of CNG on the Illinois Liquefied Petroleum Form, Illinois Form RMFT-71.

40. Effective June, 2015, this Form was replaced by the online filing of Illinois RMFT-144. For the Periods June, 2015 through June, 2017, Petitioner remitted its usage of CNG on Form RMFT-144. A true and accurate copy of a sample return filed for the June, 2017 period is attached as Exhibit B.

41. During the Periods in Issue, CNG was not subject to Illinois MFT.

42. On or around January 22, 2018, Petitioner submitted a claim for refund of Illinois MFT on its use of CNG during the Periods at Issue by filing amended Alternate Fuels Returns, Illinois Form RMFT-144-X. A true and accurate copy of a sample amended return filed for the June, 2017 period is attached as Exhibit C.

43. On January 23, 2018 and February 2, 2018, Petitioner received the respective Notices from the Department denying Petitioner's refund claims "because of the appeal process."

#### COUNT I

**Petitioner's use of CNG was not subject to Illinois Motor Fuel Tax because CNG is not a liquid, and as such, cannot be classified as a "Motor Fuel" or "Special Fuel" under the Illinois MFT.**

44. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 43, inclusive, hereinabove.

45. Prior to July 1, 2017, the Illinois MFT expressly provided that a "Motor Fuel" and a "Special Fuel" means "volatile and inflammable liquids."

46. CNG cannot physically be a liquid, and therefore it cannot be a "Motor Fuel" or "Special Fuel" under the Illinois MFT prior to July 1, 2017.

47. At no point in time prior to, during, or after the compression of natural gas process is CNG a liquid, and therefore, prior to July 1, 2017, it was not a "Motor Fuel" or "Special Fuel" subject to the Illinois MFT.

48. CNG was not a liquid during any point in time of Petitioner's possession or use, and therefore, prior to July 1, 2017, CNG was not a "Motor Fuel" or "Special Fuel" subject to the Illinois MFT.

49. The Department's denial of Petitioner's refund claims for the Years in Issue was in error.

**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that during the Years in Issue, CNG was not a "Motor Fuel" or "Special Fuel" as defined by the Illinois MFT, and Petitioner's use of CNG was therefore not subject to Illinois MFT. (35 ILCS 5505/1, *et. al.*);



- (b) enters judgment in favor of Petitioner and against the Department and orders the Department to grant Petitioner’s refund claims for the Periods in Issue; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

**COUNT II**

**The Department violated Article IX, Section 1 and Article II, Section 1 of the Illinois Constitution of 1970 by issuing a regulation that attempted to impose a tax on CNG, a non-liquid, and which was not subject to the Illinois MFT by the Illinois General Assembly.**

50. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 49, inclusive, hereinabove.

51. Article IX, Section 1 of the Illinois Constitution of 1970 states as follows:

Section 1. State Revenue Power

The General Assembly has the *exclusive power* to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away. Ill. Const. 1970, Art. IX § 1.

52. Article II, Section 1 of the Illinois Constitution of 1970 states as follows:

Section 1. Separation of Powers

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another. Ill. Const. 1970, Art. II, § 1.

53. Administrative rules must neither limit nor extend the scope of a statute. *Du-Pont Ventilating Co. v. Dep’t of Rev.*, 73 Ill. 2d 273 (Ill. 1978).

54. Prior to July 1, 2017, the Illinois MFT limited the definition of taxable fuels to “liquid fuels.”

55. Prior to July 1, 2017, the Illinois General Assembly did not subject CNG to the Illinois MFT.

56. The Department's attempt to subject CNG to Illinois MFT by its administrative regulation introduced in August, 2014, violated Article IX, Section 1 of the Illinois Constitution of 1970, by infringing on the General Assembly's exclusive power to raise revenue by law.

57. The Department's attempt to subject CNG to Illinois MFT by its regulation introduced in August, 2014, violated Article II, Section 1 of the Illinois Constitution of 1970, by exercising legislative authority that otherwise belonged exclusively to the Illinois General Assembly.

58. A Department regulation cannot exceed the scope of a statute.

59. The Department's CNG regulation, introduced August 2014, is invalid because it exceeds the scope of the Illinois MFT.

**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that during the Years in Issue, CNG was not a "Motor Fuel" or "Special Fuel" as defined by the Illinois MFT, and Petitioner's use of CNG was therefore not subject to Illinois MFT. (35 ILCS 5505/1, *et. al.*);
- (b) finds and declares that the Department's CNG regulation is invalid because it exceeds the scope of the Illinois MFT statute;
- (c) finds and declares that the Department's attempt to declare CNG a taxable "Motor Fuel" or "Special Fuel" under the Illinois MFT by its administrative regulation violates the Illinois Constitution of 1970;

- (d) enters judgment in favor of Petitioner and against the Department and orders the Department to grant Petitioner's refund claims for the Periods in Issue; and
- (e) grants such further relief as the Tribunal deems appropriate under the circumstances.

### COUNT III

**Petitioner is entitled to reasonable expenses and attorneys' fees to bring this action because the Department's administrative regulation directly conflicts with Section 2 of the Illinois MFT.**

60. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 59, inclusive, hereinabove.

61. Article 10, Section 55 of the Illinois Administrative Procedure Act states:

In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. 5 ILCS 100/10-55.

62. The Department's CNG regulation, published in August, 2014, conflicted with Section 2 of the Illinois MFT by attempting to subject CNG, a product not defined as a "Motor Fuel" or "Special Fuel" under the MFT, to Illinois MFT.

63. The Department exceeded its authority in its attempt to subject CNG, a product that was not a "Motor Fuel" or "Special Fuel" under the Illinois MFT, to the Illinois MFT.

64. Petitioner has incurred reasonable attorneys' fees and expenses in protesting the Department's denials of Petitioner's refund claims.

65. If the regulation is declared invalid, Petitioner is entitled to reasonable expenses and attorney's fees pursuant to the Illinois Administrative Procedure Act.

**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds Petitioner is entitled to an award of reasonable attorneys' fees and expenses incurred as a result of bringing this Protest; and
- (b) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

**Ozinga Ready Mix Concrete, Inc.**

Petitioner

By: David A. Hughes  
One of Petitioner's Attorneys

David A. Hughes (dhughes@hmbllaw.com)  
David W. Machemer (dmachemer@hmbllaw.com)  
Horwood Marcus & Berk Chartered  
500 W. Madison Street, Suite 3700  
Chicago, IL 60661  
(312) 606-3200

**CERTIFICATE OF SERVICE**

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered by messenger before the hour of 5:00 p.m. on the 20th day of March, 2018.

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



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# **EXHIBIT A**

**Notice of Tentative Denial of Claim**  
**for Motor Fuel Tax - Alt Fuels**



217 782-6045

February 2, 2018



Letter ID: CNXXX17557487841

License No: AF-70099  
Account ID: 41764511

\_\_\_\_\_  
#BWNKMGV  
\_\_\_\_\_  
#CNXX X175 5748 7841#  
\_\_\_\_\_  
OZINGA READY MIX CONCRETE INC  
19001 OLD LAGRANGE RD STE 300  
MOKENA IL 60448-8013



We have reviewed the claims described on the last page of this letter and have tentatively denied them because of the appeal process.

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

- If the amount of tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied but the total penalties and interest being denied 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. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this tentative denial of claim 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.

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.

If you have any questions regarding this matter, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are below.

**ALCOHOL, TOBACCO AND FUEL DIVISION**  
**ILLINOIS DEPARTMENT OF REVENUE**  
**PO BOX 19477**  
**SPRINGFIELD IL 62794-9477**

217 782-6045

**Batch Document Number**

**Reporting Period**

**Amount Claimed**

201803056176005	01/2015	5245.53
201803056176002	02/2015	3679.13
201803056176004	03/2015	7398.34
201803056176003	04/2015	15281.99
201803056176001	05/2015	14758.69



# Notice of Tentative Denial of Claim

for Motor Fuel Tax - Alt Fuels



217 782-6045

\_\_\_\_\_  
#BWNKMGV  
\_\_\_\_\_  
#CNXX XX69 71X1 2645#  
\_\_\_\_\_  
OZINGA READY MIX CONCRETE INC  
19001 OLD LAGRANGE RD STE 300  
\_\_\_\_\_  
MOKENA IL 60448-8013

January 23, 2018



Letter ID: CNXXXX6971X12645

License No: AF-70099

Account ID: 41764511



We have reviewed the claims described on the last page of this letter and have tentatively denied them because of the appeal process

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

- If the amount of tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied but the total penalties and interest being denied 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. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this tentative denial of claim 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.

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.

If you have any questions regarding this matter, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are below.

**ALCOHOL, TOBACCO AND FUEL DIVISION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19477  
SPRINGFIELD IL 62794-9477**

**217 782-6045**

<u>Batch Document Number</u>	<u>Reporting Period</u>	<u>Amount Claimed</u>
1802256184005	06/2015	13217.03
1802256184003	07/2015	15583.08
1802256184014	08/2015	15849.39
1802256184012	09/2015	14597.32
1802256184024	10/2015	20567.12
1802256184020	11/2015	14343.42
1802256184019	12/2015	9639.87
1802256184002	01/2016	6064.82
1802256184015	02/2016	6063.66
1802256184004	03/2016	8128.94
1802256184001	04/2016	11792.14
1802256184025	05/2016	13814.60
1802256184006	06/2016	15043.31
1802256184007	07/2016	15097.98
1802256184011	08/2016	15933.50
1802256184016	09/2016	15464.48
1802256184008	10/2016	15944.38
1802256184021	11/2016	15394.46
1802256184013	12/2016	11235.26
1802256184018	01/2017	9522.05
1802256184009	02/2017	9812.07
1802256184023	03/2017	11927.07
1802256184022	04/2017	13210.14
1802256184010	05/2017	14280.23
1802256184017	06/2017	16707.64

# **EXHIBIT B**

Confirmation Number: 0-725-972-416

Date Submitted: 07/11/2017

Date Printed: 07/11/2017



Illinois Department of Revenue

## RMFT-144 Alternate Fuels Return

Legal Name: OZINGA READY MIX

Filing Period: 30-Jun-2017

License no: A-70099

Due Date: 20-Jul-2017

### Identify your business

Do not write above this line

Name OZINGA READY MIX  
Address CONCRETE INC  
19001 OLD LAGRANGE RD  
MOKENA IL 604488013  
City State ZIP Telephone no.

Reporting period 30-Jun-2017

Receiver License no. AF70099

### Step 1: Figure your tax

All calculations of tax are based on gallon measurements. To convert liters to gallons, multiply liters by .2641721. For CNG, multiply liters by .12667.

Complete the table below for the total gallons of alternative fuels used or sold for use in vehicles on public highways and the total of any gallons of biodiesel blended, used, received, or produced for use intended to propel motor vehicles on public highways.

Identify Product	Other	Number of Gallons	Tax Rate	Tax Due
224 - Compressed Natural Gas (CNG)			0.19	\$16,707.64

### Step 2: Figure your net tax due

1 Total Tax	16,707.64
2. Enter the total Illinois Motor Fuel Tax paid for diesel gallons purchased for blending.	0.00
3. Subtract Line 2 from Line 1. This is your tax.	16,707.64
4. Credit	0.00
5. Subtract Line 4 from Line 3. This is your net tax due.	16,707.64

# **EXHIBIT C**



Illinois Department of Revenue

# RMFT-144-X Amended Alternate Fuels Return

Legal Name: OZINGA READY MIX  
 Account ID: 41764511  
 Filing Period: 6/30/2017  
 License no: AF-70099  
 Due Date: 20-Jul-2017

## Step 1: Mark the reason why you are filing an amended return

- 1  Overpaid (Must complete all Steps)      3  Response to notice or bill  
 2  Underpaid      4  Corrections to line items but no additional tax due

## Step 2: Figure your tax -

All calculations of tax are based on gallon measurements. To convert liters to gallons, multiply liters by .2641721. For CNG, multiply liters by .12667

Complete the table below for the total gallons of alternative fuels used or sold for use in vehicles on public highways and the total of any gallons of biodiesel blended, used, received, or produced for use intended to propel motor vehicles on public highways.

Identify Product	Other	Number of Gallons	Tax Rate	Tax Due
224 - Compressed Natural Gas (CNG)		0.00	0.190	\$0.00

## Step 3: Figure your net tax due

- |   |      |
|---|------|
| 1 Total Tax from Step 2   | 0.00 |
| 2 Enter the total Illinois Motor Fuel Tax paid for diesel gallons purchased for blending of biodiesel.<br><b>Attach invoices.</b>   | 0.00 |
| 3 Subtract Line 2 from Line 1. This is your tax.  | 0.00 |
| 4 Credit  | 0.00 |
| 5 Subtract Line 4 from Line 3. This is your net tax due.  | 0.00 |
| 6 Enter the total amount you have previously paid.<br>Compare Line 5 and Line 6.<br>• If Line 6 is <b>greater than</b> Line 5, enter the difference on Line 7.<br>• If Line 6 is <b>less than</b> Line 5, enter the difference on Line 8. | 0.00 |
| 7 Overpayment - This is the amount you have overpaid.   | 0.00 |
| 8 Underpayment - This is the amount you have underpaid. Please pay this amount.<br>Make your check payable to "Illinois Department of Revenue, Motor Fuel Tax."   | 0.00 |

## Step 4: Complete your claim for credit

If you are entitled to a claim for credit, you must complete Items 1, 2, and 3.

- 1 Explain below why the amount for which the claim is filed is alleged to be a mistake of fact or an error in law.

This claim is being filed based upon 2017 IL App (1st) 162830-U, Waste Management of Illinois, Inc. v. The Illinois Independent Tax Tribunal and The Illinois Department of Revenue which ruled that the Illinois Motor Fuel Tax (MFT) did not apply to compressed natural gas (CNG) until the enactment of PA 100-0009 which is effective on July 1, 2017. Previously we had erroneously self-assessed and remitted timely the Illinois MFT on our usage of CNG for the aforementioned tax filing period. This refund claim is being filed in the event that this Appellate decision is not appealed to the Illinois Supreme Court by the Illinois Department of Revenue or this Appellate decision is eventually upheld by the Illinois Supreme Court.

- 2 Are you a party to a civil suit involving the above amounts?     yes     no

If "yes", what is the name of the suit? \_\_\_\_\_