

**BEFORE THE
ILLINOIS INDEPENDENT TAX TRIBUNAL**

MIDWEST FUEL, INC.,)
a Missouri corporation,)
101 Riverwood Park Drive,)
Florissant, Missouri 63031,)
)
Petitioner,)
)
v.)
)
Illinois Department of Revenue)
Office of Legal Services)
100 W. Randolph St., 7-900)
7th Floor, Thompson Center)
Chicago, IL 60601)
)
Respondent.)

RECEIVED
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Case No. _____
BY: _____
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**PETITION TO PROTEST AUDIT DETERMINATION AND TAX,
PENALTY AND INTEREST ASSESSMENTS**

Petitioner, Midwest Fuel, Inc., a Missouri corporation, for its Petition to Protest Audit Determination and Tax, Penalty and Interest Assessments states as follows:

1. Petitioner Midwest Fuel, Inc. (“MFI”), is a corporation organized under the laws of the State of Missouri, qualified to do business in the State of Illinois and owning property located in the County of St. Clair, State of Illinois that is used to sell gasoline and convenience store merchandise. MFI’s Account ID is 3787-5469. MFI may be reached at 314-889-8000, the phone number of MFI’s undersigned counsel. Petitioner’s FEIN is 20-2577996.

2. Respondent, the Illinois Department of Revenue (“DOR”), is an Illinois state agency agency charged, in part, with auditing taxes related to the sale of gasoline and merchandise sold at gas stations with convenience stores. Service of process may be effected on DOR by mailing a copy of this Petition to the Office of Legal Services at the address set forth in the caption of this case. case.

3. The Bureau of Audits, Technical Review Section of DOR has alleged that an audit of MFI's sales during the period from January 1, 2010 to June 30, 2012 shows:

- A. gasoline taxes were allegedly underpaid by \$121,552.16; and
- B. that an alleged Late Payment Penalty of \$24,311 is due and owing; and
- C. that an alleged Negligence Penalty of \$24,311 is due and owing; and
- D. that alleged Interest in the amount of \$6,882.89 is due and owing; all as set forth in

Exhibit 1, Notice of Tax Liability dated November 12, 2013 with a Letter ID of CNXXXX67X4713923, a true and accurate copy of which is attached hereto and incorporated herein by this reference.

4. As set forth in Exhibit 1, DOR provided MFI 60 days, up to and including January 13, 2014, to protest the audit results reported in the Notice of Tax Liability and to request an administrative hearing.

5. On January 13, 2014, MFI timely filed a protest of the Notice of Tax Liability by certified mail properly addressed to the DOR Office of Administrative Hearings (*see Exhibit 2* attached hereto and incorporated herein by this reference).

6. On or about January 16, the DOR Office of Administrative Hearings notified MFI that it no longer had jurisdiction to hear the tax protest, but that such jurisdiction is now vested exclusively with this Illinois Independent Tax Tribunal pursuant to 35 ILCS 1010/1-1 *et seq.*

7. The Tax Tribunal's draft proposed rules provide that a timely protest that is dismissed by the Office of Administrative Hearings for lack of jurisdiction "may be filed with the Tax Tribunal within 60 days of the notice of such dismissal."

8. MFI received notice of such dismissal on or about January 21, 2014 (*see Exhibit 3* attached hereto and incorporated herein by this reference).

9. This Petition to Protest the Audit and Notice of Tax Liability asserted by DOR is properly before this Tax Tribunal because it was timely mailed by certified mail pursuant to Emergency Rule of Procedure 5000.310(a)(2) on or about March 17, 2014, accompanied by a check for \$500 made payable to the Illinois Independent Tax Tribunal (see Exhibit 4 attached hereto and incorporated herein by this reference).

10. MFI protests the audit results set forth in the Notice of Tax Liability because, among other reasons, the alleged assessment, penalties and interest is in excess of the statutory authority or jurisdiction.

11. MFI also protests the audit results set forth in the Notice of Tax Liability because the proposed assessment is based upon incomplete and inaccurate sales records, estimates based upon formula that do not accurately reflect actual sales at the store location audited, and includes sales that are either not taxable or exempt from tax.

12. The audit results, therefore, are not supported by competent and substantial evidence upon the whole record and does not reflect the true value of taxes owed.

13. Upon information and belief, the auditor apparently used a gross profit percentage of approximately 45 percent, which is excessive, not based upon fact and so grossly unfair as to be punitive and in violation of constitutional protections under both the Illinois and United States constitutions provided by the due process clauses, equal protection clauses and tax uniformity clauses.

14. Upon information and belief, the auditor incorrectly included a substantial amount of cash items that are not taxable sales since the cash was used for check cashing services, cash transfers, and purchases of property.

15. Upon information and belief, the auditor included a schedule incorrectly adjusting the amount of sales between high-rate retail sales and low-rate retail sales, and consequently, MFI challenges the amount of the adjustment.

16. Upon information and belief, the auditor included an incorrect assessment of prepaid phone cards.

17. MFI reserves the right to add additional reasons for its protest at such time as taxpayer has had a full and fair opportunity to examine all of the information upon which the proposed assessment is based.

21. The Notice of Tax Liability is arbitrary, capricious and unreasonable and involves an abuse of discretion and was made upon unlawful procedure.

WHEREFORE, Petitioner Midwest Fuel, Inc. respectfully requests that this Tax Tribunal order that the Notice of Tax Liability for the period from January 1, 2010 to June 30, 2012 be declared to be unlawful based upon any or all of the above grounds, to set aside and reduce the tax liability to those taxes actually paid and for such further and additional relief as this Tax Tribunal deems just and proper.

Respectfully submitted,

POLSINELLI PC

By: 

HELMUT STARR (#0619445)

100 S. Fourth St., Suite 1000

St. Louis, MO 63102

(314) 889-8000

Fax (314) 622-6791

hstarr@polsinelli.com

ATTORNEYS FOR PETITIONER
MIDWEST FUEL, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Petition to Protest Audit Determination and Tax, Penalty and Interest Assessments was served by certified United States Mail, postage prepaid, this 17th day of March 2014, upon:

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



A handwritten signature in black ink, appearing to read "Robert Star", is written above a horizontal line.

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



November 12, 2013



Letter ID: CNXXXX67X4713923

Account ID: 3787-5469

#BWNKMGV
 #CNXX XX67 X471 3923#
 MIDWEST FUEL INC
 CROWN MART
 ATTN: MUNJI ABDUL ABDELJABBAR
 101 RIVERWOOD PARK DR
 FLORISSANT MO 63031-6585



We have audited your account for the reporting periods January 01, 2010. through June 30, 2012. As a result we have assessed the amounts shown below.

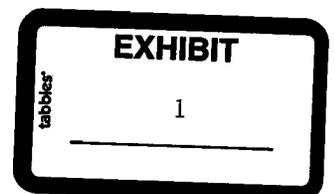
	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	138,758.00	(17,205.84)	121,552.16
Late Payment Penalty Increase	24,311.00	0.00	24,311.00
Negligence Penalty	24,311.00	0.00	24,311.00
Interest	6,882.89	0.00	6,882.89
Assessment Total	\$194,262.89	(\$17,205.84)	\$177,057.05

If you do not agree, you may file a protest and request an administrative hearing within 60 days of the date of this notice, which is **January 13, 2014**. 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 liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

If you have questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are listed below.

BUREAU OF AUDITS
 TECHNICAL REVIEW SECTION
 ILLINOIS DEPARTMENT OF REVENUE
 PO BOX 19012
 SPRINGFIELD IL 62794-9012

217 785-6579



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, or by taking the issue to 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 write or call us. Our address and telephone number are on the front of this notice.

Penalty, Fee, Interest, and Credit Information

Note: A general explanation of the penalties, fees, and interest that may have been assessed is below. For more detailed information, including specific rates in effect for different liability periods, see Publication 103, Penalties and Interest for Illinois Taxes, available on our web site at tax.illinois.gov or by calling 1 800 356-6302.

- * You owe a **late-filing penalty** if you do not file a processable return by the due date.
- * You owe a **late-payment penalty** if you
 - are required to make quarter-monthly tax payments and do not do so, or do not pay the required amount by the payment due date.
 - do not pay the amount you owe by the original due date of the return.
- * You owe an **additional late-payment penalty** if you do not pay the full amount of tax required to be shown due on a return (and that is not shown) within 30 days of the date we send you a notice of arithmetic error or a final assessment.
- * You owe an **underreporting penalty** if you do not report the correct amount of tax required to be shown due on your return before the due date of the return.
- * You owe a **bad check penalty** if your remittance is not honored by your financial institution.
- * You owe a **cost of collection fee** if you do not pay the amount you owe (including penalties and interest) within 30 days of the date printed on an assessment.

Interest is charged on tax not paid when due and is calculated on tax from the day after the original due date of your return through the date you pay the tax. For returns due January 1, 1994, through December 31, 2000, interest also accrues on penalties.

The discount rate is 1.75 percent (.0175). If you made an error when figuring the discount, it is included in the tax calculation. You may not take a discount on returns filed late or on tax paid late.

The credit applied by the Department of Revenue is from a current credit balance in your account.

Polsinelli Shughart

Helmut Starr
(314) 889-7090
(314) 622-6791 Direct Fax
hstarr@polsinelli.com

100 S. Fourth Street, Suite 1000
St. Louis, MO 63102
(314) 889-8000
Fax: (314) 231-1776
www.polsinelli.com

January 13, 2014

**Via: Certified Mail, Return Receipt Requested
Standard U.S. Mail
Federal Express**

Certified Article Number

7160 3901 9849 2882 7080

SENDERS RECORD

Illinois Department of Revenue
Office of Administrative Hearings MC 5-500
101 W. Jefferson Street
PO Box 19014
Springfield, IL 62794-9014

**Re: Midwest Fuel, Inc.
FEIN: 20-2577996
Letter ID: CNXXXX67X4713923
Account ID: 3787-5469**

Dear Sir/Madam:

On behalf of the above-referenced entity, this Firm hereby files a protest of the audit determination made by the Illinois Department of Revenue in Letter ID: CNXXXX67X4713923, Account ID: 3787-5469 in the amount of \$177,057.05; and we also hereby request an administrative hearing to contest the results of the audit. In support of the protest and request for hearing, we further state as grounds for our disagreement with the audit results as follows:

1. The proposed assessment is based upon incomplete and inaccurate sales records, estimates based upon formula that do not accurately reflect actual sales at the store location audited, and includes sales that are either not taxable or exempt from tax;
2. The auditor apparently used a gross profit percentage of approximately 45 percent, which is excessive, not based upon fact and so grossly unfair as to be punitive and in violation of constitutional protections under both the Illinois and United States constitutions provided by the due process clauses, equal protection clauses and tax uniformity clauses;

Chicago Dallas Denver Edwardsville Jefferson City Kansas City Los Angeles New York
Overland Park Phoenix St. Joseph St. Louis Springfield Topeka Washington, DC W

In California, Polsinelli Shughart LLP

EXHIBIT

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January 13, 2014
Page 2

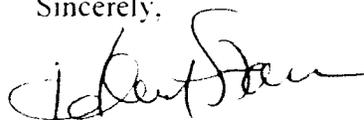
3. The auditor incorrectly included a substantial amount of cash items that are not taxable sales since the cash was used for check cashing services, cash transfers, and purchases of property;
4. The auditor included a schedule incorrectly adjusting the amount of sales between high-rate retail sales and low-rate retail sales, and consequently, the taxpayer challenges the amount of the adjustment;
5. The auditor included an incorrect assessment of prepaid phone cards; and
6. Taxpayer reserves the right to add additional reasons for its protest at such time as taxpayer has had a full and fair opportunity to examine all of the information upon which the proposed assessment is based.

Additionally, in support of the protest and request for administrative hearing, please find the following documents:

1. AH-4 – Protest and Request for Administrative Hearing Form; and
2. IL-2848 AH – Power of Attorney; and
3. A copy of the Notice of Tax Liability letter dated November 12, 2013.

Pursuant to 86 Ill. Admin Code § 200.120(b), I hereby certify that the facts stated in the above protest are true, correct and complete to the best of our knowledge and belief.

Sincerely,



Helmut Starr

Enclosures

HMS:sas



Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
Willard Ice Building
101 West Jefferson Street – Level 5SW
Springfield, IL 62702
(217)782-6995

January 16, 2014

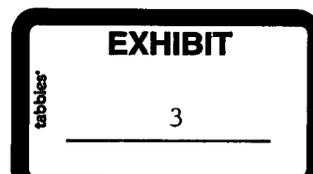
Helmut Star
Polsinelli Shughart PC
100 S. Fourth Street, Suite 1000
St. Louis, MO 63102

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**
Midwest Fuel, Inc.
Account ID: 3787-5469
Notice of Tax Liability (“NTL”)
Letter ID: CNXXXX67X4713923, dated November 12, 2013

Dear Mr. Star:

The Office of Administrative Hearings of the Illinois Department of Revenue received your protest and request for an administrative hearing on behalf of the above client. The mailing date of your protest and request for hearing indicate that the protest was sent within the 60-day protest period for requesting an administrative hearing stated on the above NTL. However, the amount of liability at issue for the protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest) for which the Department has jurisdiction for protests filed on or after January 1, 2014. For protests that exceed the statutory amount and are filed on or after January 1, 2014, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.* **Because the Department does not have jurisdiction over this protest, the Department is respectfully dismissing your client’s protest and request for administrative hearing.**

Because of these recent changes in Illinois law, the Department and the Tax Tribunal recognize that there may be instances, such as this, when a protest and request for an administrative hearing may be filed in the wrong jurisdiction. The Tax Tribunal’s website (www.illinois.gov/taxtribunal) contains draft proposed rules that include guidance on filing in the wrong jurisdiction and contact information for the Tax Tribunal. **The Tax Tribunal’s draft proposed rules provide that a timely protest that is dismissed by the Department for lack of jurisdiction may be filed with the Tax Tribunal within 60 days of the notice of such dismissal.** See Subsection (a)(3) of “Section __.310



Pleadings” of the Tax Tribunal’s draft proposed rules. Please note that the Tax Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal’s website and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Charlton". The signature is written in a cursive style with a large initial "T".

Terry D. Charlton
Chief Administrative Law Judge
Illinois Department of Revenue

Cc: Chief Administrative Law Judge, Illinois Independent Tax Tribunal
TDC

POLSINELLI

JAN 21 2014

DOCKETED