

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL
STATE OF ILLINOIS

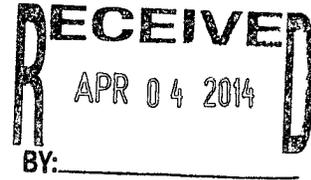
MIDWEST JET CHARTER, INC.,

Petitioner,

v.

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.



No. _____

14 TT 52

TAX PETITION

NOW COMES the Petitioner, Midwest Jet Charter, Inc. (“Midwest Jet”) (Illinois Tax Account No. 16514-04096) (EIN No. 31-1535990), a Delaware corporation, and brings this Tax Petition against Respondent, the Illinois Department of Revenue (the “Department”), pursuant to the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 *et seq.*), in protest of the Department’s Notice of Tax Liability (“NTL”), stating as follows:

INTRODUCTION

1. This Tax Petition arises out of the Department’s erroneous exemption denial and assessment of Illinois use tax with respect to the use in Illinois of a Beechcraft B300 (King Air 350) aircraft bearing manufacturer’s serial number FL-516 and U.S. Registration Number N350RK (the “Aircraft”) that Midwest Jet acquired in 2006 for primary use in its operations as a Federal Aviation Administration (“FAA”) certificated air carrier for hire. A copy of the Department’s NTL is attached hereto as Exhibit A, which identifies the tax period as beginning December 29, 2006.

PARTIES

2. Midwest Jet is a Delaware corporation qualified by the Illinois Secretary of State to do business in the State of Illinois. Midwest Jet is located at 412 Airport Road, Mattoon, Illinois 61938, and its telephone number is (217) 744-1910.

3. The Department is an agency of the Executive Branch of the State of Illinois government and is charged with responsibility for administering and enforcing many of the revenue laws of the State of Illinois, including the Use Tax Act, 35 ILCS 105/1 *et seq.*

JURISDICTION

4. This Tax Tribunal has jurisdiction pursuant to 35 ILCS 1010/1-45(a) because the alleged tax liability in question arises from the Use Tax Act and the amount at issue exceeds \$15,000, exclusive of penalties of interest, and because Midwest Jet has remitted the \$500 filing fee.

5. The Tax Tribunal also has jurisdiction pursuant to ILL. ADMIN. CODE tit. 86, § 5000.310(a)(3) because this Tax Petition was filed by Midwest Jet within 60 days of the Office of Administrative Hearings' dismissal of Midwest Jet's timely protest, which was mistakenly filed with the Office of Administrative Hearings. Attached hereto as Exhibit B is a copy of the February 11, 2014 Office of Administrative Hearings' dismissal order.

FACTUAL ALLEGATIONS

6. Since 2003 Midwest Jet has been certified in accordance with 14 C.F.R. Part 135 ("Part 135") of the Federal Aviation Regulations as an on-demand aircraft charter operator of persons and cargo operating pursuant to FAA Airline Certificate No. HMOA452K.

7. Midwest Jet acquired the Aircraft on December 29, 2006 from Beechcraft's facility in Wichita, Kansas, and the Aircraft was added by the FAA to Midwest Jet's Part 135 certificate for charter operations on March 19, 2007.

8. The Aircraft made its first flight under ownership of Midwest Jet on January 22, 2007 and from that time was used almost exclusively in interstate transportation until sold on August 12, 2010.

9. The Aircraft was acquired for Midwest Jet's operations as an FAA certificated air carrier, and the Aircraft's primary use while owned by Midwest Jet was to transport persons in interstate commerce for hire.

10. The pilots engaged to operate the Aircraft while owned by Midwest Jet were qualified and certificated by the FAA to operate the Aircraft for hire and regularly and frequently operated the Aircraft in such capacity.

11. Midwest Jet generated significant receipts from the use of the Aircraft in interstate commerce for hire and charged market rates for such use of the Aircraft. In addition to its charter rates, Midwest Jet charged its customers for expenses incidental to operation of the Aircraft in interstate commerce for hire, such as landing fees, fuel surcharges, crew meals and crew waiting time.

12. Midwest Jet markets itself as an on-demand charter operator to businesses and individuals located predominantly in central and downstate Illinois and has regular charter customers.

13. The Department disallowed Midwest Jet's claimed "rolling stock" exemption (35 ILCS 105/3-55(b), (c)) for the Aircraft; having asserted in its proposed audit findings that the Aircraft did not have sufficiently "regular and frequent" use in interstate commerce for hire.

ILLINOIS USE TAX

14. Under the Illinois Use Tax Act, 35 ILCS 105/1 *et seq.*, the State of Illinois imposes a tax upon the privilege of using, in Illinois, tangible personal property purchased at retail from a retailer. 35 ILCS 105/3.

15. To prevent actual or likely multistate taxation, the Use Tax Act does not apply to the use of tangible personal property in Illinois by an interstate carrier for hire in the transportation of persons or property across state borders. 35 ILCS 105/3-55(b); (c).

16. The Illinois Use Tax Act provides, in part, that:

[T]he tax imposed by this Act does not apply to . . . the use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce . . . as long as so used by the interstate carriers for-hire. . . .

* * *

The use, in this State, by owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire

35 ILCS 105/3-55(b), (c).

17. The term “rolling stock” includes transportation vehicles such as an aircraft owned by an interstate carrier for hire. ILL. ADMIN. CODE tit. 86, § 130.340(b).

COUNT I
(EXEMPT ROLLING STOCK)

18. Midwest Jet realleges and reincorporates paragraphs 1 through 17 of this Tax Petition herein.

19. Midwest Jet is an FAA certificated air carrier engaged in the business of owning and operating aircraft for the transportation of persons or property for hire in interstate commerce.

20. The Aircraft was acquired by Midwest Jet for use in its operations as an interstate carrier for hire and was used regularly and frequently in the transportation of persons across state borders for a fee.

21. The Department either misconstrues what constitutes qualifying usage for purposes of the rolling stock exemption or misunderstands the use of the Aircraft while owned by Midwest Jet, because the Aircraft during this period was used more in interstate transportation for hire, than in transportation not for hire.

22. Accordingly, the Aircraft was used by an interstate carrier for hire as rolling stock moving in interstate commerce and is therefore exempt from Illinois use tax.

WHEREFORE, Midwest Jet prays that the Tax Tribunal, as applicable:

- (a) Enter judgment in favor of Midwest Jet;
- (b) Declare that Midwest Jet is not liable for any Illinois use tax, interest or penalties on the use of the Aircraft in Illinois as alleged by the Department in its NTL;
- (c) Cancel the Department's NTL in its entirety; and
- (d) Grant Midwest Jet any further relief the Tax Tribunal deems appropriate.

COUNT II
(ABATEMENT OF PENALTIES)

23. Midwest Jet realleges and reincorporates paragraphs 1 through 17 of this Tax Petition herein.

24. The Department has assessed Midwest Jet with late payment and late filing penalties on the Illinois use tax allegedly owed to the State of Illinois.

25. Midwest Jet does not owe any Illinois use tax to the State of Illinois as alleged by the Department per its NTL, and therefore no penalties may be assessed by the Department and

no penalties are due to the State of Illinois. However, if any tax is due, any penalties assessed on such tax should be abated for reasonable cause. 35 ILCS 735/3-8.

26. Midwest Jet has relied in good faith on its understanding of Illinois law with respect to reporting of its Aircraft purchase to the State of Illinois for use tax purposes.

27. A taxpayer's good-faith reliance on an interpretation of Illinois statutory or regulatory law or a court decision can provide a basis for the abatement of penalties for reasonable cause. ILL. ADMIN. CODE tit. 86, § 700.400(e)(8).

28. Midwest Jet has presented viable defenses based on Illinois law that its purchase of the Aircraft is not taxable as exempt rolling stock.

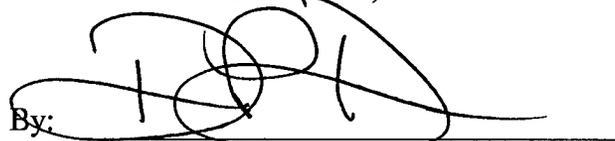
29. Accordingly, Midwest Jet has exercised ordinary care and prudence and has a good-faith legal basis for not reporting or remitting Illinois use tax on the Aircraft purchase and therefore should not be assessed any penalties.

WHEREFORE, Midwest Jet prays that the Tax Tribunal, as applicable:

- (a) Enter judgment in favor of Midwest Jet;
- (b) Declare that Midwest Jet is not liable for any Illinois penalties as alleged by the Department in its NTL;
- (c) Cancel the Department's NTL in its entirety; and
- (d) Grant Midwest Jet any further relief the Tax Tribunal deems appropriate.

Respectfully submitted,

MIDWEST JET CHARTER, INC.

By: 
One of Its Attorneys

David P. Dornier
Timothy W. O'Donnell
Vedder Price P.C.
222 North LaSalle Street, Ste. 2600
Chicago, Illinois 60601-1003
(312) 609-7500
Atty. No. 44284

April 4, 2014

Notice of Tax Liability

for Form EDA-95, Auditor-prepared Motor Vehicle Use Tax Report



#BWNKMGV
#CNXX X2X3 158X XXX1#
MIDWEST JET CHARTER INC
4216 DEWITT AVE
MATTOON IL 61938-8643

November 27, 2013



Letter ID: CNXXX2X3158XXX1

Account ID: 16514-04096

Date brought into IL: Dec 29, 2008

MV: 025000767

ID: FL-516



We have audited your account for the transaction listed above. Below is a summary of the balance.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Audit Tax	56,015.00	0.00	56,015.00
Audit Late Payment Penalty	11,202.75	0.00	11,202.75
Amnesty Penalty	11,452.75	0.00	11,452.75
Audit Late Filing Penalty	250.00	0.00	250.00
Interest	15,738.47	0.00	15,738.47
Amnesty Interest	15,738.47	0.00	15,738.47
Assessment Total	\$110,397.44	\$0.00	\$110,397.44

You may file a protest and request an administrative hearing within 60 days of the date of this notice, which is January 26, 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 give up your right to a hearing and this liability will become final. An administrative hearing is a formal legal proceeding conducted under the rules of evidence and 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 8:30 a.m. and 4:30 p.m. Our address and telephone number are below.

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

217 785-6579

Taxpayer Statement



November 27, 2013

TDD 1 800 544-5301



Letter ID: CNXXX14442216642

#BWNKMGV

#CNXX X144 4221 6642#
MIDWEST JET CHARTER INC
4216 DEWITT AVE
MATTOON IL 61938-6643

Account ID: 16514-04096

Total amount due: \$110,397.44



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.
A payment voucher is included so you may pay the balance due.

RUT-25 Use Tax

Account ID: 16514-04096

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
29-Dec-2006	56,015.00	22,906.50	31,476.94	-	-	110,397.44

* \$110,397.44 of this amount is subject to protest.

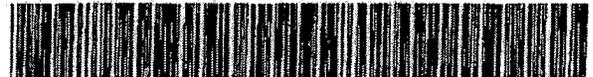
SOA

Retain this portion for your records.

P-000414

Fold and detach on perforation. Return bottom portion with your payment.

Taxpayer Statement (R-12/08) (136)



Letter ID: CNXXX14442216642
MIDWEST JET CHARTER INC

Total amount due: \$110,397.44

Write the amount you are paying below.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19006
SPRINGFIELD IL 62794-9006

\$ _____
Write your Account ID on your check.

\$110,397.44 is subject to protest.
Do not pay any Income Tax liability that you intend to protest.

000 006 010132763842 731 123199 1 0000011039744



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

February 11, 2014

Tim Marshall
4216 DeWitt Avenue
Mattoon, IL 61938

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**
Midwest Jet Charter Inc.
Account ID: 16514-04096
Notice of Tax Liability (“NTL”)
Letter ID: CNXXX2X3158XXX1, dated November 27, 2013

Dear Mr. Marshall:

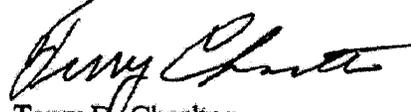
The Office of Administrative Hearings of the Illinois Department of Revenue received your protest and request for an administrative hearing on behalf of the above client. The mailing date of your protest and request for hearing indicate that the protest was sent within the 60-day protest period for requesting 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 rules that include guidance on filing in the wrong jurisdiction and contact information for the Tax Tribunal. **The Tax Tribunal’s 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 5000.310 of the Tax Tribunal’s 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,



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

TDC