

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

MIDWEST JET CHARTER, INC., ,)	
Taxpayer,)	
v.)	Case No. 14-TT-52
)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT)	
OF REVENUE,)	
Respondent.)	

NOTICE OF FILING

To: David P. Dorner
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PLEASE TAKE NOTICE that on May 5, 2014, the undersigned filed with the Illinois Independent Tax Tribunal, 160 North LaSalle St., Room N506, Chicago, Illinois 60601, the

ILLINOIS DEPARTMENT OF REVENUE'S ANSWER,

a copy of which is attached hereto and served upon you.

LISA MADIGAN, Illinois Attorney General

By: /s/ Faith Dolgin
Faith Dolgin, SPAAG
100 W. Randolph St., 7th Floor
Chicago, Illinois 60601
312.814.3185

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served a copy of this Notice of Filing and the document therein mentioned on the parties set forth above by email on May 5, 2014.

/s/ Faith Dolgin
Faith Dolgin

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ANSWER

NOW COMES the Department of Revenue of the State of Illinois (“Department”), by and through its attorney, LISA MADIGAN, Illinois Attorney General, and for its Answer to the Taxpayer’s Petition respectfully pleads as follows:

INTRODUCTION

1. This Tax Petition arises out of the Department’s erroneous denial and assessment of Illinois use tax with respect to the use in Illinois of a Beechcraft B300 (King Air 350) aircraft being 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”) certified air carrier for hire. A copy of the Department’s NTL is attached hereto as Exhibit A, which identifies the tax periods as beginning December 29, 2006.

ANSWER: The Department admits that the document attached to Taxpayer’s Petition and identified as Exhibit A speaks for itself. The Department denies the remaining allegations contained in Paragraph 1.

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.

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.

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.*

ANSWER: The Department admits the allegations contained in Paragraph 3.

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.

ANSWER: The Department admits the allegations contained in Paragraph 4.

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.

ANSWER: The Department admits the allegations contained in Paragraph 5.

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.

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6.

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.

ANSWER: The Department admits that documents it obtained from the FAA reflect that the Taxpayer acquired the Aircraft on December 29, 2006 from Raytheon Aircraft Co. and that, on some date thereafter, the Aircraft was added to Taxpayers Part 135 certificate. The Department is without information to form a belief as to the truth of the remaining allegations contained in Paragraph 7.

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.

ANSWER: Based upon documentation received by the Taxpayer, the Department denies that the Aircraft was used almost exclusively in interstate transportation. The Department

is without information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 8.

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

ANSWER: Based upon documentation received by the Taxpayer, the Department denies that the Aircraft's primary use while owned by Midwest Jet was to transport persons in interstate commerce for hire. The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9.

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.

ANSWER: The Department denies that the pilots of Midwest Jet operated the Aircraft for hire on a regular and frequent basis and, therefore, denies that the Aircraft qualified for the Rolling Stock exemption. *35 ILCS 105/3-55(b)(c)*. The Department is without information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 10.

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.

ANSWER: The allegations contained in the first sentence of Paragraph 1 as to the term “significant receipts” are vague and the Department, therefore, denies them on that basis. The Department is without information sufficient to form a belief as to the remaining allegations contained in Paragraph 11.

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.

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.

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.

ANSWER: The Department admits the allegations contained in Paragraph 13.

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.

ANSWER: Paragraph 14 contains a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of the statutes referred to in Paragraph 14 and states that such authority speaks for itself.

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).

ANSWER: Paragraph 15 contains a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of the statute referred to in Paragraph 15 and states that such authority speaks for itself.

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).

ANSWER: Paragraph 16 contains a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence,

force and effect of the statute referred to in Paragraph 16 and states that such authority speaks for itself.

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

ANSWER: Paragraph 17 contains a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of the regulation referred to in Paragraph 17 and states that such authority speaks for itself.

COUNT I
(EXEMPT ROLLING STOCK)

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 17 as if fully set forth herein.

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

ANSWER: The Department admits the allegations contained in Paragraph 19.

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.

ANSWER: The Department denies that the Aircraft was used as an interstate carrier for hire “regularly and frequently” in the transportation of persons across state borders for a fee and, therefore, denies that the Aircraft qualified for the Rolling Stock exemption. The Department is without information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 20.

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 his period was used more in interstate transportation for hire, than in transportation not for hire.

ANSWER: The Department denies the allegations contained in Paragraph 21.

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.

ANSWER: The Department denies the allegations contained in Paragraph 22.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying each and every prayer for relief in Taxpayer’s Petition;
- b. finding that the Notice of Tax Liability is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate

COUNT II
(ABATEMENT OF PENALTIES)

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 17 as if fully set forth 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.

ANSWER: The Department admits the allegations contained in Paragraph 24. The Department further states that the Notice of Tax Liability asserts additional penalties and interest imposed under the Illinois Tax Delinquency Amnesty Act, *35 ILCS 745/1, et seq.*

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.*

ANSWER: The Department denies the allegations contained in Paragraph 25.

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.

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.

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).

ANSWER: Paragraph 27 contains a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of the regulation referred to in Paragraph 27 and states that such authority speaks for itself.

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

ANSWER: The Department denies the allegations contained in Paragraph 28.

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.

ANSWER: The Department denies the allegations contained in Paragraph 29.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying each and every prayer for relief in Taxpayer's Petition;
- b. finding that the Notice of Tax Liability is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate.

Respectfully Submitted,

LISA MADIGAN, Illinois Attorney General

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**AFFIDAVIT OF DANNY PIPER
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

STATE OF ILLINOIS
COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Danny Piper, being first duly sworn on oath, depose and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I audited Midwest Jet Charter, Inc. for the tax reporting period: December 29, 2006 with aircraft having the following identifying number: FL-516.
4. I lack the personal knowledge required to either admit or deny the allegations contained in Paragraphs 2, 6, 7, 8, 9, 10, 11, 12, 20, 26 of Taxpayer's Petition.
5. I am an adult resident of the State of Illinois and truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.



Danny Piper
Revenue Auditor III