

3. Arclar's tax department can be reached at 701 Market St., Suite 723, Saint Louis, Missouri 63101 and via telephone at (314) 342-7975. Arclar may also be reached via its in-house counsel: Mr. Chris Wittenauer, 701 Market Street, St. Louis, MO 63101, (314) 588-2029, cwittenauer@peabodyenergy.com.

4. Arclar's Illinois tax identification number is 2865-1170.

5. The sales tax periods that remain in dispute are the periods from April 2016 through March 2017.

6. The IDOR first contacted Petitioner about a ROT audit in June of 2017.

7. The audit letter provided that the audit would encompass the periods beginning January 2015 through and including March 2017.

8. At the time that the IDOR first contacted Petitioner about the audit, PEC was already involved in Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Eastern District of Missouri.

9. Because of the ongoing bankruptcy proceedings, representatives of Petitioner immediately contacted IDOR personnel requesting to have the audit proceedings expedited.

10. The auditor's initial letter to Arclar requested certain financial information from Petitioner.

11. Arclar responded within thirty days providing part of the data requested, and the remainder of the data Respondent initially requested was provided to the auditor in August of 2017.

12. Respondent made an additional request for information from Arclar; Arclar provided this additional information to the auditor in January of 2018.

13. At the time Arclar provided this additional information to the IDOR, it once again requested that the audit be expedited because of the ongoing bankruptcy proceedings.

14. Respondent has still never completed its audit of the periods from January 2015 through March 2017.

15. At some point during the bankruptcy proceedings, IDOR filed a claim for ROT, interest and penalties against Petitioner in the United States Bankruptcy Court for the Eastern District of Missouri.

16. The amount of this claim Respondent filed with the bankruptcy court was estimated. The basis of Respondent's estimation was not made clear to Petitioner. However, it is Petitioner's belief that the IDOR applied the statistical sampling error rates from the previous audit cycle (September 2012 through December 2014) to the purchases from the current audit cycle (January 2015 through March 2017) to generate its estimated assessments.

17. It is Petitioner's belief that the estimated claim IDOR filed with the bankruptcy court was too high.

18. During the February/March 2018 timeframe, PEC was continuing to incur significant fees in its ongoing bankruptcy proceedings with the IDOR's claims being some of the few remaining unsettled creditors' claims that were holding up the closing of PEC's bankruptcy proceedings.

19. At some point in early 2018, the company had made a determination that the costs associated with holding open the bankruptcy proceedings were significantly higher than the amounts that would ultimately be owed to the IDOR even taking into consideration what Petitioner believed to be Respondent's inflated estimated claim.

20. Because of the large costs associated with holding open the PEC bankruptcy proceedings Petitioner attempted to open settlement negotiations with the IDOR even though the IDOR auditor had not completed, or maybe even had not yet started, the current audit.

21. The IDOR's response was to offer to settle the periods under audit using the error rate sampling from the previous audit period September 2012 through December 2014.

22. Petitioner asserted to the IDOR that using the previous audit cycle's error rates would greatly overstate the ROT for the current audit periods due to the draconian spending cuts imposed across all of PEC's businesses including Arclar, and improvements to Petitioner's sales tax controls made in light of the IDOR's conclusions in the previous audit cycle.

23. Under pressure to reach a settlement so as to allow for closing the bankruptcy proceedings, Arclar made a settlement proposal whereby the error rate from the previous audit cycle would be reduced by twenty-five percent (25%) and then applied to the current periods.

24. Without reviewing the current audit periods' data (IDOR has still not performed a statistical sampling for the current audit periods), Respondent rejected this settlement proposal with no real explanation having been provided to Arclar.

25. While the audit period ran from January 2015 through March 2017, these periods did not completely coincide with the scope of the bankruptcy proceedings.

26. The sales tax periods from the current audit cycle that also were part of the bankruptcy proceedings were limited to the months from January 2015 through and including March 2016.

27. Again, in light of the large costs associated with the bankruptcy, Petitioner reached out to the Office of the Attorney General to try to settle claims pending in the bankruptcy proceedings against both Arclar and Coulterville. These actions were taken after consultation with PEC's bankruptcy counsel.

28. Eventually, a settlement was agreed upon which used the error rate from the old audit (with no reduction), but this settlement only applied to the months in the current audit cycle that also were pending in the bankruptcy proceedings (i.e. January 2015 through and including March 2016). A copy of this Stipulation and Agreed Order from the Eastern District of Missouri Bankruptcy Court dated July 31, 2018 is attached hereto as Exhibit B.

29. By its terms, this settlement did not apply to the remainder of the audit period that was not pending before the bankruptcy court (i.e. April 2016 through and including March 2017 hereinafter "post-petition periods")(See ¶ 7 of the Stipulation and Agreed Order dated July 31, 2018).

30. At this point, Petitioner believed that the IDOR would move forward with the sampling audit for the remaining audit periods outside of the bankruptcy, the post-petition periods from April 2016 through March 2017.

31. However, this did not happen. Instead, Respondent issued Petitioner a Notice of Tax Liability dated June 11, 2018. A copy of this Notice of Tax Liability is attached hereto as Exhibit C.

32. This Notice of Tax Liability applied to the entire audit cycle including the post-petition periods.

33. Not realizing that Notice applied to the post-petition periods, Petitioner missed the original deadline for filing an appeal.

34. Arclar then petitioned the IDOR to grant a late discretionary hearing; the IDOR's Chief Administrative Law Judge granted Petitioner's requested late discretionary hearing in a letter dated September 10, 2018. See the attached Exhibit A.

MPC Issue

35. Arclar had Illinois Manufacturer's Purchase Credits ("MPCs") which carried over from the previous Illinois audit cycle (September 2012 through December 2014) of approximately \$436,000

36. In computing the amount of ROT due on the Notice of Tax Liability, it appears that Respondent applied Arclar's MPCs to the proposed liability and netted these credits against the amount of ROT that otherwise would have been due.

37. While the IDOR did offset the estimated ROT liability with the amount of Petitioner's preexisting MPCs, it also appears that IDOR nevertheless charged Petitioner both interest and penalties on the amount of ROT that was absorbed by Petitioner's preexisting MPCs.

Errors Committed by Respondent

38. The Department erred by applying the statistical sampling error rate from the previous audit cycle to the current audit cycle for several reasons.

39. First, Petitioner did not consent to this methodology as part of the Stipulation and Agreed Order from the bankruptcy court.

40. Second, in light of the bankruptcy of PEC, the purchasing and spending of the company was drastically lower in the current audit cycle than it had been in the previous audit cycle making the

sampling data from the previous audit cycle unrepresentative of the company's operations during the current audit cycle.

41. Third, after the completion of the IDOR's audit for the previous audit cycle, Petitioner made changes to its internal sales tax processes designed to correct the errors that had been identified by the IDOR.

42. Petitioner believes methodology employed by the IDOR for the current audit cycle greatly overstates the Petitioner's true liability because of the changed circumstances Petitioner found itself in during the post-petition periods from April 2016 through March 2017 (bankruptcy and improvements made to Petitioner's internal controls).

43. Fourth, the IDOR was provided all of the data requested by its auditor, Petitioner fully expected Respondent would use this data to complete a new statistical sampling analysis for the post-petition periods using the current data it had supplied.

44. At the time Respondent issued its Notice of Tax Liability, the audit had been open for over a year and Petitioner was current in responding to all information requests submitted by Respondent.

45. Additionally, for this audit, the IDOR erred by imposing interest and penalties upon the portion of the estimated ROT liability that was offset against Arclar's preexisting MPCs. While Petitioner, does not agree with the estimated assessment issued by Respondent, to the extent additional tax is deemed owed by this Tribunal (or the IDOR after a statistical sampling audit is conducted for the current audit cycle) no interest or penalties should be due on the portion of any additional ROT liability to the extent that Petitioner has preexisting MPCs to offset this liability.

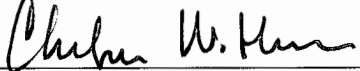
CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Petitioner requests that this Tribunal review Respondent's Notice of Tax Liability and order it to be modified to reflect Petitioner's actual error rate, if any, for the current audit cycle. This may entail ordering the Respondent to conduct/complete a statistical sampling analysis for the

remainder of the audit period. Arclar requests an abatement of all penalties associated with its retailers' occupation tax liability pursuant to the reasonable cause standard set forth in 86 Ill. Admin Code § 130.901(h). In addition, Petitioner requests an abatement of any penalties and interest to the extent such interest and penalty result from additional ROT due and such additional ROT due is absorbed by Arclar's preexisting Manufacturer's Purchase Credits. Finally, Petitioner asks this Tribunal to grant such further relief as this Tribunal deems fair and reasonable.

Respectfully Submitted,

PEABODY ARCLAR MINING, LLC

By 

Christopher Wittenauer

ILLINOIS BAR #6276187

Peabody Arclar Mining, LLC

701 Market Street

St. Louis, MO 63101

Phone: (314) 588-2029

Fax: (314) 342-3419

cwittenauer@peabodyenergy.com



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

September 10, 2018

Peabody Arclar Mining, LLC
Stacy Simonin
701 Market Street
St. Louis, MO 63131

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**
Peabody Arclar Mining, LLC
Notice of Tax Liability, dated June 11, 2018
Letter ID: CNXXX17823953121

Dear Ms. Simonin:

The office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for your client Peabody Arclar Mining, LLC. regarding the above Notice of Tax Liability. Based on the information provided in your request, I believe that it is appropriate to **grant your request for a late discretionary hearing for the above notice.**

The amount of liability at issue for this protest exceeds the statutory amount for which the Department has jurisdiction. For late discretionary hearings that are granted and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's rules provide that when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.

I recommend that you review the information provided on the Tax Tribunal's website (www.illinois.gov/taxtribunal) and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry D. Charlton".

Terry D. Charlton
Chief Administrative Law Judge

TDC

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

Peabody Energy Corporation, et al.,

Reorganized Debtors.

Case No. 16-42529-399

CHAPTER 11

Jointly Administered

Re: Docket No. 3802

**STIPULATION AND AGREED
ORDER REGARDING KCC CLAIM NO. 6650 (CASE NO.
16-42545; ECF NO. 101-1; PEABODY ARCLAR MINING,
LLC), KCC CLAIM NO. 6708 (CASE NO. 16-42529; ECF NO. 4811-1;
PEABODY ENERGY CORPORATION) AND KCC CLAIM NO. 7038
(CASE NO. 16-42550; ECF NO. 27; PEABODY COULTERVILLE MINING, LLC)**

This Stipulation and Agreed Order is entered into by and between the parties,

(a) Peabody Energy Corporation ("Reorganized PEC") and certain of its direct and indirect subsidiaries, as reorganized debtors (collectively, the "Reorganized Debtors" and, prior to the Effective Date, as defined herein, "PEC" and the "Debtors") and (b) the Illinois Department of Revenue (the "Department of Revenue").

RECITALS

A. On April 13, 2016 (the "Petition Date"), the Debtors commenced reorganization cases in this Court by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By order of the Court [Docket No. 105], the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered.

B. On September 28, 2016, the Department of Revenue filed KCC Claim No. 6650 (Case No. 16-42545; ECF No. 101-1) against Peabody Arclar Mining, LLC ("Arclar").

EXHIBIT B

C. On October 7, 2016, the Department of Revenue filed KCC Claim No. 6708 (Case No. 16-42529; ECF No. 4811-1) against PEC.

D. On January 27, 2017, the Debtors filed their Second Amended Joint Plan of Reorganization of Debtors and Debtors in Possession [Docket No. 2229] (as amended on March 15, 2017, by Docket No. 2719, the "Plan"). The Court entered an order confirming the Plan on March 17, 2017. The Plan became effective on April 3, 2017 (the "Effective Date").

E. On September 8, 2017, the Department of Revenue filed KCC Claim No. 7038 (Case No. 16-42550; ECF No. 27) filed against Peabody Coulterville Mining, LLC ("Coulterville").¹

F. On June 13, 2018, the Reorganized Debtors filed the *Reorganized Debtors' Motion to Estimate KCC Claim No. 6650 (Case No. 16-42545; ECF No. 101-1; Peabody ARCLAR Mining, LLC). KCC Claim No. 6708 (Case No. 16-42529; ECF No. 4811-1; Peabody Energy Corporation) and KCC Claim No. 7038 (Case No. 16-42550; ECF No. 27; Peabody Coulterville Mining, LLC) [Docket No. 3802] (the "Motion to Estimate")*, requesting that Court estimate those three claims for all purposes in these chapter 11 cases.

G. For tax year 2014, the Department of Revenue owes Reorganized PEC an income tax refund of \$1,900,000.00 (the "2014 Refund").

NOW, THEREFORE, it is hereby stipulated and agreed by and between the Parties through their undersigned counsel and the Court ORDERS, as follows:

1. Pursuant to Section 502(c) of the Bankruptcy Code, KCC Claim No. 6708 (Case No. 16-42529; ECF No. 4811-1; Peabody Energy Corporation) is hereby judicially determined for all purposes in these chapter 11 cases as follows:

¹ KCC Claim No. 7038 was filed after the applicable bar date established by this Court's *Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* [Docket No. 721] with the Reorganized Debtors' agreement.

	Taxes Class 4A Priority	Penalties Class 6A	Interest Class 4A Priority	Total
PEC (KCC #6708)	\$297,638.00	\$56,171.00	\$55,483.00	\$409,292.00

2. The Department of Revenue will offset the total allowed amount of KCC Claim No. 6708 (\$409,292.00) against the 2014 Refund. Approximately six weeks after Reorganized PEC submits appropriate paperwork to the Department of Revenue requesting payment of the 2014 Refund, the Department of Revenue will pay Reorganized PEC \$1,490,708.00, which will be the balance of the 2014 Refund remaining after it is offset against the total allowed amount of KCC Claim No. 6708. The Reorganized Debtors, including Reorganized PEC, and the Debtors' estates, including PEC's estate, shall have no obligation to make any distributions for KCC Claim No. 6708.

3. KCC Claim No. 6650 (Case No. 16-42545; ECF No. 101-1; Peabody Arclar Mining, LLC) and KCC Claim No. 7038 (Case No. 16-42550; ECF No. 27; Peabody Coulterville Mining, LLC) are hereby judicially determined for all purposes in these chapter 11 cases as follows:

	Taxes Class 4B Priority	Penalties Class 6B	Interest Class 4B Priority	Total
Arclar (KCC #6650)	\$85,289.94	\$15,592.92	\$1,487.81	\$102,370.67
Coulterville (KCC #7038)	\$54,051.75	\$10,007.80	\$1,066.07	\$65,125.62

4. The claims listed in paragraph 3 shall be satisfied as follows. The Department of Revenue will apply \$102,370.67 of its existing sales and use tax credits on the Arclar account to satisfy Claim No. 6650 in full. The Reorganized Debtors shall request the Department of Revenue to, and the Department of Revenue thereafter shall, move \$55,117.82 in existing sales and use tax credits from the Arclar account to the Coulterville account and apply said credit to

satisfy the priority amount of \$55,117.82 of Claim No. 7038 in full. With respect to the balance of Claim No. 7038 in the amount of \$10,007.80, the Reorganized Debtors shall satisfy this portion of the claim by paying to the Department of Revenue the amount owed to creditors holding allowed Class 6B claims in accordance with the Plan.

5. The Reorganized Debtors, including Arclar and Coulterville, and the Debtors' estates, including Arclar and Coulterville's estates, shall have no other obligation to make any distributions for KCC Claim Nos. 6650 and 7038 other than as set forth in paragraph 4.

6. The Motion to Estimate is withdrawn without prejudice.

7. This Stipulation and Agreed Order does not (a) authorize the Department of Revenue to assess, or prevent the Department of Revenue from assessing, taxes, penalties or interest respecting any tax period after the Petition Date or (b) prejudice the Reorganized Debtors' ability to dispute any postpetition taxes, penalties or interest that the Department of Revenue has assessed or later assesses.

8. Kurtzman Carson Consultants LLC, the Reorganized Debtors' Claims and Noticing Agent, is authorized to cause the Reorganized Debtors' claims register to be amended to reflect the terms of this Stipulation and Agreed Order.

9. The terms and conditions of this Stipulation and Agreed Order shall be immediately effective and enforceable upon entry of the Stipulation and Agreed Order.

10. No later than two business days after the date of this Order, the Claims and Notice Agent appointed in the above captioned bankruptcy cases shall serve a copy of this Order and shall file a certificate of service no later than 24 hours after service.

DATED: July 31, 2018
St. Louis, Missouri


Barry S. Schermer
United States Bankruptcy Judge

Dated: July 31, 2018

Respectfully submitted,

/s/ Teresa I. Pisula

Teresa I. Pisula (admitted *pro hac vice*)
Assistant Attorney General
Revenue Litigation Bureau
Office of the Illinois Attorney General
500 South Second Street
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Attorney for Illinois Department of Revenue

/s/ Steven N. Cousins

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Jaimie L. Mansfield, MO 60948
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Cleveland, Ohio 44114
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Facsimile: (216) 579-0212
Email: tdreynolds@jonesday.com

Attorneys for Reorganized Debtors

Notice of Tax Liability



#BWNKMGV
#CNXX X178 2395 3121#
PEABODY ARCLAR MINING LLC
701 MARKET ST
SAINT LOUIS MO 63101-1830

June 11, 2018



Letter ID: CNXXX17823953121

Account ID: 2865-1170
Reporting period: March 31, 2017

We have audited your Sales/Use Tax & E911 Surcharge account for the reporting periods January 01, 2015, through March 31, 2017, and the liability has been processed on Form EDA-105-R, ROT and E911 Surcharge Audit Report. As a result, we have assessed the amounts shown below.

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

If you do not agree, you may protest this notice within specific time periods. See the "Protest Rights" section on the following page of this notice for additional information and instructions.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action to satisfy your liability.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following pages of this notice for additional information and instructions.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	145,988.00	0.00	145,988.00
Late Payment Penalty Increase	29,198.00	0.00	29,198.00
Interest	12,509.95	0.00	12,509.95
Assessment Total	\$187,695.95	\$0.00	\$187,695.95

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

AUDIT BUREAU
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-8012

217 785-6579

Taxpayer Statement



#BWNKMGV
#CNXX X198 87X2 2564#
PEABODY ARCLAR MINING LLC
701 MARKET ST
SAINT LOUIS MO 63101-1830

June 11, 2018

TDD 1 800 644-5304



Letter ID: CNXXX19887X22564

Account ID: 2865-1170

Total amount due: \$187,695.95

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.

Sales/Use Tax & E911 Surcharge

Account ID: 2865-1170

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Aug-2012	(394,867.00)	2,000.00	(26,392.28)	-	243,917.21	Not Included*
* This period may be under bankruptcy protection.						
30-Jun-2014	10,676.00	-	-	-	(16,494.23)	Not Included*
* This period may be under bankruptcy protection.						
31-Mar-2017	146,342.00	29,198.00	12,509.95	-	(354.00)	187,695.95
• This period may be under bankruptcy protection.						
• \$187,695.95 of this amount is subject to protest.						

SOA

Retain this portion for your records.

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

P-000667

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



Letter ID: CNXXX19887X22564
PEABODY ARCLAR MINING LLC

Total amount due: \$187,695.95

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

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

\$187,695.95 is subject to protest.
Do not pay any Income Tax liability that you intend to protest.

000 006 009018132324 731 123199 7 0000018769595