

IN THE ILLINOIS INDEPENDENT
TAX TRIBUNAL

SUGAR CAMP ENERGY LLC)

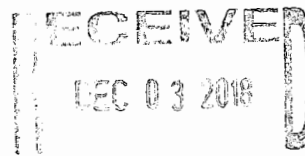
Petitioners,)

v.)

No.)

ILLINOIS DEPARTMENT
OF REVENUE,)

Respondent,)



PETITION

The Petitioner, Sugar Camp Energy LLC (“Petitioner”) by their attorneys of record, David Kupiec and Natalie Martin of Kupiec & Martin, LLC, hereby petitions the Illinois Independent Tax Tribunal to review, and withdraw and/or modify the Notice of Tax Liability (hereinafter “Notice”) issued by the Illinois Department of Revenue (hereinafter “Department”) on October 3, 2018 for the reasons set forth below.

INTRODUCTION

1. Petitioner is a limited liability company formed under the laws of Delaware.
2. Petitioner’s principal place of business is 211 N. Broadway, Suite 2600, St. Louis, Missouri and its telephone number is 314-932-6160. Petitioner operates a coal mine located in Franklin County, Illinois and its Account ID is 5560-8523.
3. The Department issued the Notice on October 3, 2018, for reporting period ending June 30, 2014, assessing a tax deficiency, penalty and interest for Illinois sales and use tax. A copy of the Notice is attached to this Petition.

JURISDICTION

4. The Tax Tribunal has jurisdiction pursuant to 35 ILCS 1010/1-45(a) because the alleged tax liability in question from the Illinois Retailers Occupation and Use Tax Act in the aggregate exceeds, \$15,000, exclusive of penalties and interest, and because Petitioners have remitted the \$500 filing fee.

BACKGROUND AND RELEVANT FACTS

5. Petitioner operates the Sugar Camp Mine located in Franklin County, Illinois. Petitioner is a wholly owned subsidiary of Foresight Energy, LP which is majority owned by Murray Energy. Murray Energy operates coal mining facilities in several states, including Illinois.
6. Petitioner's mining complex, located in Franklin County, in southern Illinois, contains 1.3 billion tons of clean, recoverable coal reserves and is designed to support up to 4 separate longwall mines. Petitioner operates two longwall mines that share common surface infrastructure but maintain separate access points for mine personnel and equipment.
7. Petitioner purchased various pieces of equipment used within the coal mining and processing functions during the period at issue.
8. These various pieces of equipment at issue were only used in mining, specifically in the disposal of solid or liquid waste material from the mine and processing facility.
9. Petitioner filed its ST-1, Sales and Use Tax and E911 Surcharge Returns for periods January 1, 2012 through June 30, 2014.
10. Petitioner filed its ST-16, Annual Report of Manufacturer's Purchase Credit (hereinafter "MPC") Earned, and ST-17 Annual Report of Manufacturer's Purchase Credit Used for periods January 1, 2012 through December 31, 2014.
11. Petitioner had been previously*audited by the Department for the prior sales tax period January 1, 2010 through December 31, 2011.
12. During the previous audit, Petitioner claimed MPC for the later part of the audit period and its filing method of reporting the MPC was not raised as an audit issue and no interest was assessed.

13. Petitioner continued this filing method during the period at issue.
14. The Petitioner was audited for this period and was issued a Notice of Proposed Liability.
15. The auditor recognized that MPC was earned but did not apply the credits earned to the periods where it was reported as used on the ST-17 forms that were filed.
16. The auditor charged penalty and interest on the tax owed on purchases which the Petitioner originally used MPC credits to pay the tax.
17. The interest and penalties were charged from the time of purchase through the assessment and only then the Auditor applied the MPC earned to satisfy the tax leaving incorrect penalties and interest.
18. The Petitioner subsequently filed for review by the Informal Conference Board (hereafter "ICB") and a hearing was held.
19. On May 7, 2018, the ICB issued an Action Decision ordering that Petitioner receive partial credit of new purchases of items placed in service. Moreover, the Department Auditor made additional audit adjustments favorable to Petitioner after the ICB hearing. However, the ICB and subsequent review did not result in the Department granting the requested tax exemption for certain items which are the subject of this protest.
20. Upon adjustment pursuant to the ICB, the penalties were recomputed but interest was assessed on tax before credits applied.
21. The ICB Action Decision also abated penalties related to the MPC reporting issue and applied MPC credits to the outstanding tax owed before the penalties were calculated.
22. The Department issued a Notice of Tax Liability dated October 3, 2018, assessing tax of \$1,168,849, penalties of \$14,105 and interest of \$193,181.20.

APPLICABLE ILLINOIS LAWS AND REGULATIONS

23. The following Illinois Statutes and Regulations are relied upon:

Illinois Retailers' Occupation Tax 35 ILCS 120/2

(35 ILCS 120/2) (from Ch. 120, par. 441)

Sec. 2. Tax imposed. A tax is imposed upon persons engaged in the business of selling at retail tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photo processing, but not including products of photo processing produced for use in motion pictures for public commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Sales of (1) electricity delivered to customers by wire; (2) natural or artificial gas that is delivered to customers through pipes, pipelines, or mains; and (3) water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under this Act. The provisions of this amendatory Act of the 98th General Assembly are declaratory of existing law as to the meaning and scope of this Act. (Source: P.A. 98-583, eff. 1-1-14.)

(35 ILCS 120/2-5

Sec. 2-5. Exemptions. Gross receipts from proceeds from the sale of the following tangible personal property are exempt from the tax imposed by this Act:

...

(21) Until July 1, 2023, coal and aggregate exploration, mining, off-highway hauling, processing, maintenance, and reclamation equipment, including replacement parts and equipment, and including equipment purchased for lease, but excluding motor vehicles required to be registered under the Illinois Vehicle Code. The changes made to this Section by Public Act 97-767 apply on and after July 1, 2003, but no claim for credit or refund is allowed on or after August 16, 2013 (the effective date of Public Act 98-456) for such taxes paid during the period beginning July 1, 2003 and ending on August 16, 2013 (the effective date of Public Act 98-456).

Illinois Use Tax 35 ILCS 105/3-5

Sec. 3-5. Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

...

(16) Until July 1, 2023, coal and aggregate exploration, mining, off-highway hauling, processing, maintenance, and reclamation equipment, including replacement parts and equipment, and including equipment purchased for lease, but excluding motor vehicles required to be registered under the Illinois Vehicle Code. The changes made to this Section by Public Act 97-767 apply on and after July 1, 2003, but no claim for credit or refund is allowed on or after August 16, 2013 (the effective date of Public Act 98-456) for such taxes paid during the period beginning July 1, 2003 and ending on August 16, 2013 (the effective date of Public Act 98-456).

Illinois Use Tax 35 ILCS 105/3-85 – Manufacturer’s Purchase Credit -

Sec. 3-85. Manufacturer's Purchase Credit. For purchases of machinery and equipment made on and after January 1, 1995 through June 30, 2003, and on and after September 1, 2004 through August 30, 2014, a purchaser of manufacturing machinery and equipment that qualifies for the exemption provided by paragraph (18) of Section 3-5 of this Act earns a credit in an amount equal to a fixed percentage of the tax which would have been incurred under this Act on those purchases. For purchases of graphic arts machinery and equipment made on or after July 1, 1996 and through June 30, 2003, and on and after September 1, 2004 through August 30, 2014, a purchaser of graphic arts machinery and equipment that qualifies for the exemption provided by paragraph (6) of Section 3-5 of this Act earns a credit in an amount equal to a fixed percentage of the tax that would have been incurred under this Act on those purchases. The credit earned for purchases of manufacturing machinery and equipment or graphic arts machinery and equipment shall be referred to as the Manufacturer's Purchase Credit.

Regulation Section 130.331 - Manufacturer’s Purchase Credit

a) Earning Manufacturer's Purchase Credit

1) Effective January 1, 1995 through June 30, 2003, and beginning again on September 1, 2004 through August 30, 2014, a manufacturer may earn a credit when purchasing exempt manufacturing machinery and equipment. Effective July 1, 1996 through June 30, 2003, and beginning again on September 1, 2004 through August 30, 2014, a graphic arts producer may earn a credit when purchasing exempt graphic arts machinery and equipment. The credit is known as the Manufacturer's Purchase Credit or MPC. The amount of credit is limited to a percentage of the 6.25% State rate of tax that would have been incurred on the purchase of exempt manufacturing machinery and equipment. (See Section

130.325 and Section 130.330 of this Part.) By statute, MPC was repealed June 30, 2003 (Public Act 93-0024; effective June 20, 2003). Pursuant to Public Act 93-0840, effective July 30, 2004, MPC was reenacted without any specific sunset date. Subsequently, Public Act 96-116 was enacted to add a sunset date for MPC of August 30, 2014.¹

b) Using Manufacturer's Purchase Credit

1) The credit may be used to satisfy Use Tax or Service Use Tax liability incurred on the purchase of qualifying production related tangible personal property. (See Section 3-85 of the Use Tax Act [35 ILCS 105/3-85] and Section 3-70 of the Service Use Tax Act [35 ILCS 110/3-70].) Credit earned prior to July 1, 2003 cannot be used after September 30, 2003. Credit earned on and after September 1, 2004 may only be used to satisfy tax liabilities for purchases of production related tangible personal property made on and after September 1, 2004 through August 30, 2014. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act) The credit may be applied only to the 6.25% State rate of tax incurred. Prior to the credit being earned, credit may not be used on a qualifying purchase, except as provided in subsection (e)(7)(B). However, the credit may be used the same day that it is earned, but must be followed by proper reporting of the credit as set out in subsections (c), (d) and (e). For purposes of when to use accumulated Manufacturer's Purchase Credit, a manufacturer or graphic arts producer is always safe to use the credit in a month after the month in which the credit was earned.

...

(e) Reporting Manufacturer's Purchase Credit Earned or Used for Periods on or after July 1, 1995

1) In order to validate credit earned as the result of a qualifying purchase of exempt manufacturing machinery and equipment or exempt graphic arts machinery and equipment, the manufacturer or graphic arts producer must report credit earned to the Department by signing and filing an Annual Report of Manufacturer's Purchase Credit Earned for each calendar year no later than the last day of the sixth month following the calendar year in which the Manufacturer's Purchase Credit is earned. The Annual Report of Manufacturer's Purchase Credit Earned shall be filed on forms prescribed or approved by the Department and shall state, for each month of the calendar year:

A) The total purchase price of all purchases of exempt manufacturing machinery and equipment or graphic arts machinery and equipment on which the credit was earned;

¹ Public Act 100-0594 extended the MPC thru July 1, 2023. Proposed amendments to Regulation Section 130.350 have been submitted to reflect the 2023 extension.

- B) The total State Use Tax or Service Use Tax that would have been due on those items;
- C) The percentage used to calculate the amount of credit earned;
- D) The amount of credit earned; and
- E) Such other information as the Department may reasonably require. (See Section 3-85 of the Use Tax Act.)

3) In order to validate credit used to satisfy the tax liability on purchases of production related tangible personal property, the manufacturer or graphic arts producer must report credit used to the Department by signing and filing an Annual Report of Manufacturer's Purchase Credit Used for each calendar year no later than the last day of the sixth month following the calendar year in which the Manufacturer's Purchase Credit is used. The Annual Report of Manufacturer's Purchase Credit Used shall be filed on forms prescribed or approved by the Department and shall state, for each month of the calendar year.

Regulation Section 130.350 Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment²

- a) General. The exemption provided in this Section terminated June 30, 2003, pursuant to P.A. 93-24. P.A. 98-456, effective August 16, 2013, reinstated the coal exemption retroactive to July 1, 2003. The Department, however, will not approve any claims or refunds on or after August 16, 2013, for taxes due or paid during the period beginning July 1, 2003 through August 16, 2013. The exemption for coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment will terminate by operation of the sunset provisions of Section 2-70 of the Retailers' Occupation Tax Act on August 16, 2018. The exemption does not apply to motor vehicles required to be registered pursuant to the Illinois Vehicle [625 ILCS 5]. This exemption applies only to equipment used primarily in coal exploration, mining, off highway hauling, processing, maintenance and reclamation. Equipment used 50% or less in exploration, mining, off highway hauling, processing, maintenance and reclamation will not qualify for this exemption. Excluded from this exemption are motor vehicles required to be registered pursuant to the Illinois Vehicle Code. Special mobile equipment other than motor vehicles may qualify for the exemption if it is used primarily in coal exploration, mining, off highway hauling, processing, maintenance and reclamation. This exemption does not include supplies (such as chemicals, rust inhibitors and adhesives), coolants, lubricants, inert limestone, magnetite and other materials added to the coal washing medium, reclamation materials (such as seed, plants and limestone), items of personal apparel (such as gloves, shoes, hats, helmets, coveralls, masks, mask air filters, belts, harnesses or holsters) or fuel of any type.

² Regulation Section 130.350 -Coal Exploration and Mining exemption reinstated and updated; 38 Ill. Reg. 17421. PA 98-0456 (HB 2918) Retroactively (to July 1, 2003) restores coal and aggregate exemptions.

b) Definitions

1)“Coal” means a mineral deposit or finished product comprised of combustible, carbon based plant fossil matter used as fuel.

2)"Coal Exploration" means the search for coal. Exploration includes, but is not limited to, geophysical exploration, excavating and drilling to locate coal deposits.

3)"Kits" means commercially-packaged sets of parts which are ordered from a manufacturer, inventoried and sold by a retailer as a single item. An example would be a "tire assembly" comprised of the rim, tire, foam filling and valve stem.

4)"Maintenance" means keeping coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment in a state of repair and efficiency.

5)"Mining" means the extraction of coal from the earth by underground and surface mining and includes the extraction of coal by the mine owner or operator.

6)"Off Highway Hauling" means carrying or transporting and would include transport of overburden, waste material, including gob from the processing facility for disposal, and coal from the coal seam to the processing facility by conveyors or unlicensed vehicles, and conveying coal from the beginning of the processing cycle through the last stage of coal production which ends at the time the coal is stored.

7)"Processing" means preparation activities performed directly on the coal which are necessary for converting coal into a finished product so that it is ready for sale or the reprocessing of coal mine waste to extract and recycle coal from the waste by the mine owner, or operator or a third party contractor or successor. Processing includes, but is not limited to, sizing, crushing, drying and washing.

8)"Reclamation" means conditioning areas affected by mining operations. Examples of reclamation activities include, but are not limited to, backfilling, grading, seeding and planting.

9)"Replacement Parts" means parts that are used to replace parts of qualifying equipment and that require periodic replacement. To be considered a replacement part, the part must be purchased for the purpose of being installed and must, in fact, become a physical component part of coal exploration, mining, off highway hauling, processing, maintenance or reclamation equipment.

10)“Used primarily” means equipment that is used more than 50% of the time in coal exploration, mining, off highway hauling, processing, maintenance and reclamation.

c) Exempt Activities

By way of illustration and not limitation, the following activities will be considered to constitute coal exploration, mining, off highway hauling, processing, maintenance and reclamation:

1) Coal is produced in a surface mining operation that begins with locating the coal deposit to be mined, clearing of surface obstacles and overburden from the land above the coal deposit to be mined, continues with the removal of waste material and with the extraction of the coal, continues with the transportation from the coal seam to the processing facility, continues further with the refilling and grading of the mined area with overburden and waste material from a subsequently mined area, continues further with the processing of the coal, and ends with the stockpiling of the coal to allow moisture to drain and evaporate from the washed coal. By way of illustration and not limitation, the following equipment is exempt:

- A) Geophysical surveying, excavating, dredging and drilling machinery and equipment used primarily to locate surface mine coal deposits (e.g., data logger transducer; photoionization detector; optical televiewer; acoustic televiewer; petrographic survey equipment; and inclinometer survey equipment).
- B) Equipment used primarily to drill and load holes for blasting material to dislodge the overburden, blasting agents (such as ammonium nitrate and fuel oil or ANFO); equipment used primarily to ignite blasting agents including, but not limited to, high explosives, detonators, lead-in lines and blasting machines; and equipment used primarily to transport the blasting material.
- C) Equipment used primarily to remove overburden and other waste materials from the pit to be mined.
- D) Equipment used primarily to modify the energy purchased for the surface mining process if the equipment is used to modify the energy for use on exempt equipment (e.g., transformers, capacitors and other equipment used to reduce, increase, stabilize or otherwise control the amperage, voltage, or frequency of the electric current and transmit the electrical current to coal mining and processing equipment).
- E) Pumps and hoses used primarily to remove water or to divert water from the active pit area.
- F) Equipment used primarily to load the overburden, waste material or coal to be transported to the processing facility into off highway haulage trucks or onto a conveyor system.
- G) Equipment used primarily to extract coal from the earth.
- H) Unlicensed off highway haulage trucks or a conveyor system to transport overburden, waste material or coal to the processing facility.
- I) Equipment used primarily to backfill, grade, seed, plant or otherwise reclaim previously mined land.
- J) Equipment used primarily in a coal wash plant to clean the coal prior to sale to customers. Equipment used primarily in the cleaning, sizing or grading of coal in a coal preparation plant may qualify as manufacturing machinery and equipment (see Section 130.330).

- K) Equipment used primarily to blend different grades of coal together so that the final product meets customer specifications regarding quality and sulfur content.
- L) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment in the field (e.g., draglines and shovels that move and load overburden and shovels that load coal in the pit).
- M) Computers and electrical control panels integral to and used primarily to operate exempt equipment used in coal exploration, mining, off highway hauling, processing, maintenance and reclamation.
- N) Remote audio visual equipment integral to and used primarily in connection with coal exploration, mining, off highway hauling, processing, maintenance and reclamation.
- O) Electric generators used primarily to power exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.
- P) Communication equipment integral to and used primarily in production and operation activities in connection with coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

2) Coal is produced in an underground mining operation that begins with locating the coal deposit to be mined, continues with the boring of a shaft from the surface to the coal deposit to be mined, continues with the removal of waste material and the extraction of coal, continues further with the transportation from the coal seam to the processing facility, continues further with the installation of roof supports and the coating of walls with rock dust to prevent mine explosions and collapse, continues further with the processing of coal and disposal of waste material from the mine and processing facility, and ends with the stockpiling of coal to allow moisture to drain and evaporate from the washed coal. By way of illustration and not limitation, the following equipment is exempt:

- A) Geophysical surveying, excavating and drilling machinery and equipment used primarily to locate underground mine coal deposits (e.g., data logger transducer; photoionization detector; optical televiewer; acoustic televiewer; petrographic survey equipment; and inclinometer survey equipment).
- B) Equipment used primarily to create access to the coal deposit (e.g., a rotary drill or a track drill), equipment used primarily to sever coal from the deposit (e.g., continuous miners and longwall mining equipment), and equipment used primarily to load coal onto conveyor belts, into trucks or other conveyances used to transport coal from the deposit to the processing operation (e.g., shuttle cars and battery powered haulers).
- C) Shuttle cars used primarily to transport the coal from the point of severance to the feeder-breaker at the end of a conveyor belt or other transportation system.
- D) The feeder-breaker which breaks the large lumps of coal and feeds the coal onto the conveyor belt which carries the coal outside the mine where it is temporarily stockpiled or transported to the processing facility.

- E) Equipment used primarily to modify the energy purchased for the underground mining process if the equipment is used to modify the energy for use on exempt equipment, e.g., transformers, capacitors and other equipment used to reduce, increase, stabilize or otherwise control the amperage, voltage or frequency of the electrical current and transmit the electrical current to mining and processing equipment.
- F) Pumps and hoses, piping and discharge apparatus used primarily in the movement or removal of water or to divert water from the underground mine area.
- G) Equipment used primarily to install roof bolts, roof bolt supports and side rib bolt supports and in scaling (e.g., the removal of loose rock and slabs of rock) prior to roof bolting to prevent mine collapse.
- H) Roof bolts and plates, side rib bolts and plates, and epoxy resin cartridges used primarily to secure roof bolts and side rib bolts installed to prevent mine collapse.
- I) Equipment used primarily to coat mine walls with inert limestone as the coal is removed to prevent explosions caused by the escape of volatile materials.
- J) Equipment installed as improvements to real estate in underground mining such as elevators, rail, ventilating and illuminating systems, including the foundations for such equipment as long as those foundations are located within the underground mine.
- K) Equipment used primarily in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of underground mine structures. Materials, such as lumber, steel, concrete, rock and other building materials, qualify for the exemption only when used in underground mine structures, including use as roof support to prevent mine collapse.
- L) Additions to exempt underground rail conveyors, ventilating and illumination systems due to the progression of mining.
- M) Longwall equipment consisting of shields, shearers, face conveyors and equipment used primarily for recovery, handling and transportation of longwall equipment.
- N) Machinery and equipment used primarily to transport coal to aboveground facilities.
- O) Machinery and equipment used primarily to convey coal from the beginning of the processing cycle through the last stage of coal production.

- P) Equipment used primarily in a coal wash plant to clean the coal prior to sale to customers. Equipment used primarily in the cleaning, sizing, or grading of coal in a coal preparation plant may qualify as manufacturing machinery and equipment (see Section 130.330).
- Q) Equipment used primarily to blend different grades of coal together so that the final product meets customer specifications regarding quality and sulfur content.
- R) Equipment, other than motor vehicles required to be registered pursuant to the Illinois Vehicle Code, used primarily to transport miners into and out of an underground mine (e.g., mantrips, utility vehicles, mobile equipment and scoops).
- S) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment at the mine site (e.g., draglines and shovels that move and load overburden and shovels that load coal in the pit).
- T) Computers and electrical control panels integral to and used primarily to operate exempt equipment used in coal exploration, mining, off highway hauling, processing, maintenance and reclamation.
- U) Remote audio visual equipment integral to and used primarily in connection with exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.
- V) Electrical generators used primarily to power exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.
- W) Communication equipment integral to and used primarily in production and operation activities in connection with exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

3) By way of illustration and not limitation, the following maintenance equipment is exempt:

- A) Unlicensed maintenance and welding trucks used primarily for field repair of exempt equipment.
- B) Lathes, drill presses, air compressors and welders used primarily to build, modify or rework exempt repair parts or equipment.
- C) Mobile and overhead cranes and manlifts used primarily in connection with exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation.

- 4) By way of illustration and not limitation, the following coal exploration equipment is exempt unless registered pursuant to the Illinois Vehicle Code:
- A) Drill rigs used primarily to drill exploration core holes.
 - B) Water trucks used primarily in the drilling process.
 - C) Winch and casing trucks used primarily in the drilling process.
 - D) Field maintenance trucks used primarily to make repairs on exempt field equipment.
 - E) Air compressors used in connection with exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation.

...

Regulation Section 130.905 Interest

a) In addition to any penalty provided for in this Act, any amount of tax which is not paid when due shall bear interest at the rate of 1% prior to September 17, 1981, and at the rate of 2% on and after September 17, 1981 and prior to January 1, 1987, and at the rate of 1.25% on and after January 1, 1987 through December 31, 1993, per month or fraction thereof from the date when such tax becomes past due until such tax is paid or a judgment therefor is obtained by the Department. Beginning January 1, 1994, any amount of tax which is not paid when due shall bear interest at the rate and in the manner specified in Sections 3-2 and 3-9 of the Uniform Penalty and Interest Act from the date when such tax becomes past due until such tax is paid or a judgment therefor is obtained by the Department. Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax and penalty due. [35 ILCS 735/3-2(c)] (See 86 Ill. Adm. Code 700.200, Interest Paid and Interest Charged, 86 Ill. Adm. Code 700.210, Interest Rate Calculation, and 86 Ill. Adm. Code 700.220, Interest Charged Taxpayers.)

Taxpayer's Bill of Rights 20 ILCS 2520

(20 ILCS 2520/2) (from Ch. 120, par. 2302) Sec. 2. Legislative Declaration. The General Assembly finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the General Assembly to place guarantees in Illinois law to ensure that the rights, privacy, and property of Illinois taxpayers are adequately protected during the process of the assessment and collection of taxes.

The General Assembly further finds that the Illinois tax system is based largely on self-assessment, and the development of understandable tax laws and taxpayers informed of those laws will both improve self-assessment and the relationship between taxpayers and government. It is the further intent of the General Assembly to promote improved taxpayer self-assessment by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

(Source: P.A. 86-176; 86-18)

**ERROR I – THE CALCULATION OF INTEREST WAS IN ERROR AS IT WAS
CALCULATED BEFORE THE APPLICATION OF THE MANUFACTURER’S
PURCHASE CREDIT**

24. Petitioner realleges and reincorporates paragraphs 1-23 of the Petition herein.
25. Petitioner timely filed its ST-16, Annual Report of MPC Earned, and ST-17 Annual Report of Manufacturer’s Purchase Credit Used for periods January 1, 2012 through December 31, 2014.
26. Petitioner timely filed its ST-1, Sales and Use Tax and E911 Surcharge Returns for periods January 1, 2012 through June 30, 2014.
27. Petitioner filed its ST-1 using the same procedure for filing ST-1 returns that was applied, reviewed and accepted pursuant to the prior Department audit.
28. Petitioner relied on this approval and defacto guidance when preparing the ST-1’s for the January 1, 2012 through June 30, 2014 period.
29. During the audit of this period, the auditor revisited this filing procedure and determined it was incorrect.
30. The difference between the prior procedure and the current procedure is only presentational. The tax difference between the prior procedure and the current procedure is \$0 tax. No additional tax would be due.
31. Petitioner filed for the Department’s ICB review and a hearing was conducted. An ICB Action Decision granting partial relief was issued and the audit was subsequently revisited.
32. Pursuant to the ICB Action Decision, the assessed tax, interest and penalty was reduced according to the Action Decision.
33. This computation included \$1,168,849.65 in tax before applying the MPC. This included tax assessed for each period exclusive of the MPC.
34. The Department then computed interest on this amount before applying Petitioner’s MPC.
35. The Department then applied the MPC against this tax amount and computed the penalty due. The Department classified this amount as “net tax due” on their penalty calculation spreadsheet.

36. Petitioner is questioning the computation of interest before application of the MPC yet the computation of penalty after application of the MPC.
37. Illinois law requires interest to apply to the “amount of tax which is not paid when due...”.
86 Ill. Adm. Code Section 130.905
38. In order to calculate the tax which is not paid when due, the MPC must be calculated and applied.
39. The MPC “may be used the same day that it is earned.” 86 Ill. Adm. Code Section 130.331(1).
40. Petitioner had properly earned and validated the credit used on its filed ST-16’s and ST-17’s.
41. Petitioner’s contends that the presentation of the credit on the ST-1’s is not determinative. The Department had proper, ample knowledge of the MPC and should apply it accordingly.
42. The interest calculation should be based on net tax due for each period as the penalty was calculated. This is in accordance with the Illinois statute which requires interest on amount of tax not paid when due.
43. The Department cannot claim that the tax is due during each period when it had notice of the MPC. It cannot apply the MPC after the interest calculation as the total tax calculation is not “due.”
44. Based on the Petitioner’s facts presented above and the Illinois regulations, the Notice of Tax Liability should be modified and interest recomputed and reduced accordingly.

**ERROR II – PETITIONER CORRECTLY CLASSIFIED ITEMS AS EXEMPT FROM
ILLINOIS RETAILERS’ OCCUPATION TAX AND USE TAX PURSUANT TO
ILLINOIS REGULATION SECTION 130.350 AS SUCH ITEMS ARE ONLY USED IN
THE “DISPOSAL OF WASTE MATERIAL FROM THE MINE AND PROCESSING
FACILITY”**

45. Petitioner realleges and reincorporates paragraphs 1-23 of the Petition herein.
46. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail (35 ILCS 120/2). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail (35 ILCS 105/3).
47. Section 2-5 of the Illinois Retailers' Occupation Tax Act provides an exemption for:
- (21) ... coal and aggregate exploration, mining, off-highway hauling, processing, maintenance, and reclamation equipment, including replacement parts and equipment, and including equipment purchased for lease, but excluding motor vehicles required to be registered under the Illinois Vehicle Code. ... 35 ILCS 120/2-5(21)
48. Section 3-5 of the Illinois Use Tax Act contains a similar exemption in Section 16 of the Use Tax Act, (35 ILCS 105/3-5(16)).
49. Moreover, Illinois Regulation Section 130.350(c)(2) expressly exempts from tax items primarily used in the off highway removal and disposal of waste material from the mine and processing facility.
50. The items at issue are all used 100% in the coal production process, specifically the off highway waste disposal production process, and include items that are: parts of dozers; excavators; mobile equipment and water handling equipment. None of the items at issue are items registered with the State of Illinois for highway use.
51. Specifically, the dozers, excavators, and mobile equipment are integral parts in and their primary purpose is the disposal process of gob³ from the processing facility as they are used to transport the gob for final placement on the impoundment.

³ The refuse from coarse coal is generally referred to as “gob.”

52. The equipment and repair parts used in the waste water handling system are used in the disposal of waste water from the processing facility and the mine.
53. Accordingly, based on the Illinois statutory and regulatory provisions noted above, Petitioner contends that the remaining off highway refuse items and waste water parts are exempt from Illinois Retailer's Occupation Tax and Illinois Use Tax and that the Notice of Tax Liability should be modified to remove the tax assessed on these items.

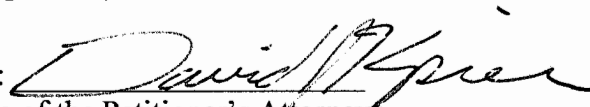
ERROR III – PETITIONER REQUESTS ABATEMENT OF PENALTIES AND INTEREST PURSUANT TO REASONABLE CAUSE PROVISIONS OF REGULATION SECTION 700.400

54. Petitioner realleges and reincorporates paragraphs 1-23 of the Petition herein.
55. For the period ending June 30, 2014, Petitioner requests the abatement of penalties and associated interest pursuant to the reasonable cause provisions of Regulation 700.400 including \$13,605 in late payment penalties and \$500 in late filing penalties.
56. Petitioner contends that they exercised ordinary business care and prudence as they filed the required forms establishing the MPC and continued to file such forms and tax returns pursuant to a prior audit. Petitioner relied on this guidance and de facto guidance when preparing the returns during this period.
57. Petitioner further contends that based on the facts presented above it was reasonable for Petitioner to continue this methodology and that the difference between methods was purely presentation and had a zero tax effect. Petitioner also notes that once this methodology was questioned during the audit at issue, it was discontinued. In fact, Petitioner filed amended returns for subsequent periods pursuant to such Audit findings.
58. Finally, the Department's regulations on Reasonable Cause look to whether the Petitioners "made a good faith effort" and exercised "ordinary business care in prudence". 86 Illinois Admin. Code Section 700.400 (35 ILCS 735-3/8). As indicated above, Petitioner made every effort to comply with the Illinois tax statutes and regulations. They filed all returns including the ST-16 and ST-17. The information provided above supports the abatement of all penalties and interest assessed on the Notice under the reasonable cause provisions.

CONCLUSION AND RELIEF REQUESTED

THEREFORE, as supported by the facts and ERROR I, ERROR II and ERROR III presented above, the Department is required to withdraw, cancel and or/modify the Notice of Tax Liability issued to Petitioner on October 3, 2018, for the tax periods at issue. We respectfully request that the Tax Tribunal rule in favor of Petitioner.

Respectfully Submitted

By: 
One of the Petitioner's Attorneys

David J. Kupiec
Kupiec & Martin, LLC
600 W. Van Buren #202
Chicago, IL 60607
(312) 632-1022
dkupiec@kupiecandmartin.com
Attorney No. 58817

Notice of Tax Liability



October 3, 2018



Letter ID: CNXXXX3251113448

#BWNKMGV
#CNXX XX32 5111 3448#
SUGAR CAMP ENERGY LLC
211 N BROADWAY STE 2600
SAINT LOUIS MO 63102-2742

Account ID: 5560-8523
Reporting period: June 30, 2014

We have audited your Sales/Use Tax & E911 Surcharge account for the reporting periods January 01, 2012, through June 30, 2014, 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	1,168,849.00	0.00	1,168,849.00
Late Payment Penalty Increase	13,605.00	0.00	13,605.00
Late Filing Penalty Increase	500.00	0.00	500.00
Interest	193,181.20	0.00	193,181.20
Assessment Total	\$1,376,135.20	\$0.00	\$1,376,135.20

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 62794-9012

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, by a filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1, *et seq.*

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns. For those under bankruptcy protection this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

Explanation of Penalties and Fees

For more detailed information, see Publication 103, Penalties and Interest for Illinois taxes.

Are penalties ever abated?

If you were unable to either timely pay the required amount of payments, pay the tax you owe by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. A bad check or negligence penalty may also be waived due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations. A fraud penalty or cost of collection fee cannot be waived.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax. Interest cannot be waived.

Late-filing or Nonfiling penalty - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.

Late-payment penalty for underpayment of estimated or accelerated tax due - You owe this penalty if you were required to make estimated or accelerated tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.

Late-payment penalty for regular tax payments - You owe this penalty if you did not pay the tax you owed by the due date of the payment or the original due date of the return.

Cost of collection fee - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.

Bad check penalty - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.

Negligence penalty - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.

Fraud penalty - You owe this penalty if any part of a deficiency is due to fraud.

Audit penalty - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

Protest Rights

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

If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest 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, which is December 03, 2018. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail Form AH-4 along with a copy of this notice to the address on the form. 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.

Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

IN THE INDEPENDENT TAX TRIBUNAL

<u>SUGAR CAMP ENERGY LLC</u>)	Doc.
Petitioner)	
Vs.)	
<u>THE ILLINOIS DEPARTMENT OF</u>)	
<u>REVENUE</u>)	
Respondent)	

NOTICE OF FILING

TO:
Illinois Department of Revenue
100 W. Randolph St.
SUITE 7-900
Chicago, IL 60601

Please take note that on December 3, 2018, the undersigned representative for Sugar Camp Energy LLC, filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle St. Room 506, Chicago, IL 60601 a Petition, a copy of which is attached and served on you.

Date: December 3, 2018

Respectfully Submitted,
SUGAR CAMP ENERGY LLC

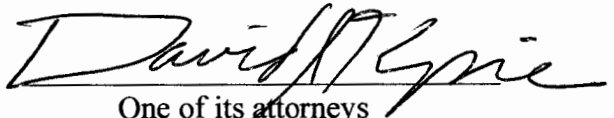
By: 
One of its attorneys

David J. Kupiec
Kupiec & Martin, LLC
600 West Van Buren Street, Ste 202
Chicago, Illinois 60607

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 in person before the hour of 5:00p.m. on the 3rd day of December, 2018.

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

By: 
One of its attorneys

David J. Kupiec
Kupiec & Martin, LLC
600 West Van Buren Street, Ste 202
Chicago, Illinois 60607