

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

MIDWEST MEDICAL EQUIPMENT SOLUTIONS, INC.,)	
)	
Petitioner)	
)	Case Nos. 17-TT-120; 19-TT-93; and
v.)	21-TT-77
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Chief Judge James M. Conway
)	
Respondent.)	

**PETITIONER’S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Petitioner, Midwest Medical Equipment Solutions, Inc. (“Midwest Medical”), by and through its attorneys Saul Ewing Arnstein & Lehr LLP, for its Brief in Support of Motion for Summary Judgment against Respondent, the Illinois Department of Revenue (“Respondent”), states as follows:

INTRODUCTION

Summary judgment is warranted in favor of Midwest Medical and against Respondent because Midwest Medical’s provision of durable medical equipment (“DME”), including breast pumps and nebulizers, to individuals covered by Medicaid is exempt from Illinois Retailer’s Occupation Tax (“ROT”).

Over the past decade, approximately 70% of Midwest Medical’s nebulizer and breast pump sales (including the services Midwest Medical provides in making those sales) have been to individuals enrolled in Medicaid. Prior to 2011, all of Midwest Medical’s sales to individuals enrolled in Medicaid were paid directly from the State of Illinois (or one of its agencies) to

Midwest Medical. These sales were therefore exempt from ROT pursuant to Section 130.2080 of the Illinois Administrative Code (the “Code”), which provides that sales of tangible personal property to government entities are exempt from ROT liability.

In 2011, the State began implementation of a mandatory program in an attempt to improve the service-delivery process by out-sourcing its administration. It began using health maintenance organizations, or managed care organizations (“MCOs”), to facilitate the delivery of healthcare services to Medicaid beneficiaries. The MCOs contract with the State to facilitate care delivery for Medicaid enrollees, and they are paid by the State for their services. The MCOs engage service providers, such as Midwest Medical, to provide direct care to Medicaid recipients. When Midwest Medical delivers a product or service to an individual enrolled in Medicaid, the MCO uses the funds it obtains from the State to pay Midwest Medical on the State’s behalf. The MCO effectively acts as a conduit through which the State pays Midwest Medical for the patient’s medical products and services. In sum, and notwithstanding the insertion of the MCO into the process, Midwest Medical’s nebulizer and breast pumps are still paid for by the State and are exempt from any ROT liability.

STATEMENT OF FACTS

I. Midwest Medical’s Sales to Medicaid Beneficiaries were Exempt from ROT before the State Inserted MCOs into the Medicaid Services Delivery Framework.

Midwest Medical is a licensed provider of medical prescription items, including breast pumps and nebulizers. (Stipulation of Facts and Other Matters, ¶ 10). Midwest Medical provides these items by prescription to individuals enrolled in Medicaid. (*Id.* at ¶¶ 10, 18, 19). A nebulizer is a device that may be used by a prescribed patient to inhale medication into the lungs or to treat illnesses. (*Id.* at ¶ 16). A breast pump, on the other hand, is a mechanical device that lactating women use to extract milk from their breasts. (*Id.* at ¶ 19). Over the course of the applicable time

period, approximately 70% of Midwest Medical's sales of nebulizers and breast pumps have been to individuals enrolled in Medicaid. (*Id.* at ¶ 14).

Prior to approximately 2013, when Midwest Medical issued a nebulizer or breast pump to an individual enrolled in Medicaid, the State would reimburse Midwest Medical by issuing payment directly to Midwest Medical. (*Id.* at ¶ 20). Throughout that time, Midwest Medical treated its sales to individuals enrolled in Medicaid as tax exempt from ROT pursuant to § 130.120 of the Code and reported them as such on its Illinois tax returns during the applicable periods. (Affidavit of Zac Buikema, attached hereto as **Exhibit 1**, ¶ 3). Until approximately 2013, all reimbursements for products sold to individuals enrolled in Medicaid were coming directly from the State to Midwest Medical. (*Id.* at ¶ 20).

II. The Addition of MCOs as an Intermediary between Service Providers and Medicaid Beneficiaries.

In 2011, the State (through the Illinois Department of Healthcare and Family Services (“IDHFS”)) began utilizing MCOs in the Medicaid healthcare services delivery process. (*Id.* at ¶ 47). IDHFS is the State agency primarily responsible for the facilitation of Medicaid. (*Id.* at ¶ 21). MCOs contract with the State and are reimbursed from IDHFS via capitated payments for the Medicaid patients that they service. (*Id.* at ¶ 37). These contracts set forth the duties that the MCO must fulfill to the State. (*Id.* at ¶¶ 40-41). In order to continue servicing Medicaid patients, providers like Midwest Medical must also contract with the MCOs. (*Id.* at ¶¶ 28-29). The reimbursements contemplated within the Midwest Medical-MCO contracts are known as “fee-for-service” because the specific fee Midwest Medical charges the MCO for specific DME provided to a patient is based on a set fee schedule. (*Id.* at ¶ 35). The fee schedule is set by IDHFS. (*Id.* at ¶ 33). Midwest Medical must base its prices off of those set forth in the fee schedule in order to continue servicing Medicaid patients, and adjustments to the fee schedule are only implemented

by the State through the legislative process. (*Id.* at ¶ 34). Though IDHFS Deputy Administrator Robert Mendonsa (“Mr. Mendonsa”) has testified that there are no rules or regulations requiring Midwest Medical to charge the amount set forth in the fee schedule, from a practical perspective, Midwest Medical cannot carry on its sales to Medicaid enrollees unless it charges the fee amounts fixed by IDHFS’s fee schedule. (*Id.* at ¶¶ 68-69; Ex. 1, *Z. Buikema Aff.*, ¶ 5). For patients utilizing an MCO, Midwest Medical receives reimbursement payments from the MCO, which ultimately receives its reimbursement payments from the State through IDHFS. (*Id.* at ¶ 26).

Since 2011 when IDHFS first began implementing MCOs into the care delivery process on a mandatory basis, the percentage of Illinois Medicaid enrollees has increased incrementally year-over-year. (*Id.* at ¶ 48). Correspondingly, the percentage of reimbursements coming to Midwest Medical directly from the State has generally decreased incrementally. (*Id.* at ¶ 49). Currently, over eighty percent (80%) of Illinois Medicaid enrollees utilize an MCO, and a majority of enrollees are assigned to an MCO by IDHFS. (*Id.* at ¶¶ 50, 56). This figure has continued to grow since the implementation of the HealthChoice Illinois program in 2018. (*Id.* at ¶ 58).

Under the current framework, eligible patients have thirty (30) days to choose an MCO from a list that is set by IDHFS. (*Id.* at ¶ 53). The deadline is listed within the enrollment letter sent to patients, and if the patient does not choose an MCO by the deadline, IDHFS assigns them to one. (*Id.*). The majority of enrollees are ultimately assigned to an MCO. (*Id.* at ¶56). New enrollees can change their health plan (including their assigned MCO) in the first ninety (90) days of enrollment, and then again annually during the “open enrollment” period. (*Id.* at ¶ 54). Patients have no other recourse to select their MCO, and for all intents and purposes, the majority of Medicaid enrollees are required to utilize the services of an MCO. *See Managed Care Manual*, at section 1.40, Illinois.gov, <https://www.illinois.gov/hfs/MedicalProviders/Handbooks/>

[Pages/default.aspx](#)) (the majority of Medicaid enrollees “are required to enroll in a managed care program” such as an MCO).

III. Midwest Medical’s Reimbursement from the MCOs.

Since the State implemented MCOs into the Medicaid services delivery process, Midwest Medical has followed a standard protocol for obtaining reimbursement for sales made to Medicaid enrollees. (*Id.* at ¶ 63). Midwest Medical verifies the patient’s Medicaid eligibility by examining their Illinois Medicaid identification number. (*Id.* at ¶ 63). Midwest Medical then confirms the individual’s Medicaid coverage by checking the State of Illinois website database. (*Id.* at ¶ 64). Midwest Medical then prepares an invoice for the product(s) transferred to the patient as part of its service, and submits the invoice to the MCO for payment. (*Id.* at ¶ 65). The fee Midwest Medical charges is based on the fee schedule posted and maintained by IDHFS. (*Id.* at ¶ 68). The MCO, using funds obtained from the State specifically earmarked for reimbursing service providers like Midwest Medical, remits payment to Midwest Medical. (*Id.* at ¶ 66).

For the Periods at Issue, Midwest Medical’s sales to individuals enrolled in Medicaid (and the corresponding percentage of Midwest Medical’s sales overall) have been as follows:

<u>Tax Period</u>	<u>Sales Value / Percentage of Total Sales</u>
• 2012 (June 1 – December 31):	\$723,673.00 / 79.3%
• 2013:	\$1,136,331.54 / 62.0%
• 2014:	\$1,364,024.69 / 62.6%
• 2015:	\$2,006,377.92 / 69.4%
• 2016:	\$2,469,236.93 / 71.7%
• 2017:	\$3,156,224.22 / 74.3%
• 2018:	\$1,017,154.17 / 75.4%
• 2019:	\$2,941,758.23 / 69.2%
• 2020 (January 1 – April 30):	\$1,042,556.78 / 66.3%

(Ex. 1, Z. Buikema Aff., ¶ 4 (setting forth sales for 2012 period); Stipulation Ex. C (itemizing sales for 2013 through 2020 periods)).

Notwithstanding the existence of the MCO in this process, Midwest Medical processes the Medicaid reimbursements from the MCO in the same manner as Midwest Medical had previously processed reimbursements coming directly from IDHFS. (*Id.* at ¶ 67). Further, Midwest Medical has continued to treat its MCO reimbursement sales as exempt from ROT. (*Id.* at ¶ 59).

IV. The Audits.

Respondent audited Midwest Medical for three separate periods in relation to Midwest Medical's ROT liability. (*Id.* at ¶ 71). The first period at issue covers June 1, 2012 through December 31, 2015 (the "First Tax Period"). (*Id.* at ¶ 74). The second period at issue covers January 1, 2016 through December 31, 2017 (the "Second Tax Period"). (*Id.* at ¶ 79). The third period at issue covers January 1, 2018 through April 20, 2020 (the "Third Tax Period," and together with the First Tax Period and Second Tax Period, the "Periods at Issue"). (*Id.* at ¶ 86).

Respondent issued Midwest Medical a Notice of Tax Liability for the First Tax Period assessing Midwest Medical \$71,173.00 in unpaid ROT liability, as well as \$5,858.19 in interest and \$14,940.00 in late payment penalties. (*Id.* at ¶ 77). For the Second Tax Period, Respondent assessed Midwest Medical \$163,819.00 in unpaid tax liability, as well as \$13,744.72 in interest and \$32,965.00 in late payment penalties. (*Id.* at ¶ 82). For the Third Tax Period, Respondent assessed Midwest Medical \$79,923.00 in unpaid tax liability, as well as \$5,961.34 in interest and \$22,824.00 in late payment penalties. (*Id.* at ¶ 88).

Midwest Medical disputes Respondent's assessments for the Period at Issue. Specifically, Midwest Medical argues that its sales of DME to individuals enrolled in Medicaid are exempt from ROT liability under § 130.120 of the Code because the products transferred to Medicaid patients are paid for by the State (through IDHFS). The primary issue is whether Midwest Medical's sales

of DME to individuals enrolled in Medicaid is subject to ROT regardless of whether the reimbursement payments come from IDHFS or from IDHFS via the MCO. (*Id.* at ¶ 90).

ARGUMENT

Midwest Medical is entitled to summary judgment in its favor and against Respondent on Respondent’s proposed adjustment to sales tax for the Periods at Issue. Midwest Medical’s sales of nebulizers and breast pumps to Medicaid enrollees are paid for by the State, notwithstanding the presence of MCOs in the transactions. To hold otherwise would impermissibly place form over substance, and lead to an absurd and unjust result to Illinois Medicaid service providers.

I. Legal Standard.

Summary judgment is appropriate where, when viewed in the light most favorable to the non-moving party, the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2–1005(c); *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill. App. 3d 675, 678-79 (1st Dist. 2005). “Material facts are facts that might affect the outcome of the case under the applicable substantive law.” *Thai v. Triumvera 600 Naples Court Condominium Association*, 2020 IL App (1st) 192408, ¶ 38. Although summary judgment is a drastic measure, it is appropriate in cases where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *American Economy Ins. Co. v. DePaul University*, 383 Ill. App. 3d 172, 177 (1st Dist. 2008), appeal allowed 229 Ill.2d 617, appeal dismissed.

II. Statutory Interpretation.

The fundamental rule of statutory construction is to ascertain and give effect to the intention of the legislature. *Hall v. Henn*, 208 Ill.2d 325, 330 (2003). Courts should construe and

interpret a statute in its entirety, bearing in mind the subject which it addresses and the legislature's apparent objective in enacting it. *People v. David*, 199 Ill.2d 130, 135 (2002). "The best indication of legislative intent is the statutory language, given its plain and ordinary meaning." *Hall*, 208 Ill.2d at 330. Further, when the language of the statute is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction. *Davis v. Toshiba Machine Co., America*, 186 Ill. 2d 181, 184-85 (1999). Nevertheless, courts presume that the legislature did not intend an absurd, inconvenient, or unjust result. *Carver v. Sheriff of La Salle County*, 203 Ill.2d 497, 508 (2003).

III. The ROT.

The ROT imposes sales tax on upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 86 Ill. Admin. Code § 130.101. "The tax is measured by the seller's gross receipts from such sales made in the course of such business." *Id.* The term "gross receipts," in this context, means "all the consideration actually received by the seller, except traded-in tangible personal property." *Id.* at § 130.401. Medicines and medical appliances are not taxed at the general 6.25% rate under ROT, but rather, are taxed at a reduced 1% rate. *Id.* at § 130.311. "A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body." *Id.* The Code sets forth a number of categories of sales which are exempt from the ROT, including sales which are ultimately paid for by government bodies. Section 130.120, states:

The tax does not apply to receipts from sales...

- (i) that are made to any governmental body (*see* Section 130.2080 of this Part).

IV. Midwest Medical's Sales of DME to Medicaid Beneficiaries are Exempt from ROT Liability.

Midwest Medical's sales to Medicaid beneficiaries are exempt from ROT liability because, notwithstanding the presence of the MCO in the transaction, Midwest Medical is ultimately paid by the State. The relationship between Medicaid beneficiaries and Medicaid MCOs is unlike the normal vendor-customer relationship. Indeed, the federal Medicaid website describes the relationship as follows: "Managed Care is a health care delivery system organized to manage cost, utilization, and quality. Medicaid managed care provides for the delivery of Medicaid health benefits and additional services through contracted arrangements between state Medicaid agencies and managed care organizations (MCOs) that accept a set per member per month (capitation) payment for these services." *Managed Care*, Medicaid.gov, <https://www.medicaid.gov/medicaid/managed-care/index.html>. Consistent with Midwest Medical's interpretation, the Medicaid website describes the MCO as a conduit through which Medicaid funds flow, rather than a distinct service provider.

Moreover, Mr. Mendonsa, the Deputy Administrator at IDHFS since 2013, testified that although Illinois Medicaid service providers are reimbursed by the MCO, the MCO reimburses the service provider using funds obtained from the State and federal Medicaid programs. (Stipulation Ex. G, 35:17-21). Specifically, the following exchange took place between Midwest Medical's counsel and Mr. Mendonsa at Mr. Mendonsa's deposition:

Q: And when a provider is ultimately paid for whatever rate that they contract, they're paid from the MCO, correct?

A: That is correct.

Q: And the MCO is, in one way or another, funded by the State, correct?

A: That is correct.

(*Id.* at 39:5-11).

Further, Respondent's own letter rulings and information letters are instructive in interpreting § 130.2080 in this context. For instance, General Information Letter No. ST 12-0015-GIL, 2012 WL 1189002, provides that "sales made to Medicare and Medicaid are exempt from tax as sales to a government body" as long as the sales are properly documented. *Id.* at *6. It further states that the seller may be liable for ROT for any portion of the sale price that is not ultimately covered by Medicare or Medicaid. *Id.* For example, where Medicare or Medicaid pays 80% of patient's bill and the patient's insurer or the patient himself pays the remaining 20%, the 80% which is ultimately paid by Medicare or Medicaid is considered exempt from ROT as a sale to a government body. *Id.*¹

Similarly, during the Periods at Issue in this case, Midwest Medical sold nebulizers and breast pumps to individuals enrolled in Medicaid. The patient was not personally responsible for paying any portion of the bill, and Midwest Medical did not receive payment from the individual patients. Rather, the patient's bill was covered entirely by the State through the patient's designated MCO. The sale price is therefore still "covered" by Medicaid and exempt from ROT. Accordingly, and because the sales were fully covered by the State, the entire transaction was to be exempt from ROT and Midwest Medical was not responsible for remitting ROT to the State.

V. Substance Prevails over Form to Determine the Economic Realities of the IDHFS-MCO-Provider Reimbursement Process.

Further, the insistence that sales by providers to MCOs, which are ultimately reimbursed by Medicaid, do not receive the same exemptions as when a provider insists on making the sale directly to Medicaid, simply lacks any practical sense and runs contrary to established precedent.

¹ Respondent's General Information Letter No. ST 11-0110-GIL, 2011 WL 7014993 provides a similar example, as does General Information Letter No. ST 11-0074-GIL, 2011 WL 4891050, *2 ("tax is due upon any portions of bills paid by individuals or private insurance companies not covered by Medicare, Medicaid, or [IDHFS.]" (emphasis added)).

This is a clear substance over form issue. Illinois courts have held that the “substance over form” doctrine applies to determine the economic realities of the transaction. *JB4 Air LLC v. Dep't of Revenue*, 388 Ill. App. 3d 970, 977 (2d Dist. 2009) (citing *JI Aviation*, 335 Ill. App. 3d 905, 919-920 (1st Dist. 2002)). The “substance over form” doctrine is pervasive in tax law at both the state and federal level. *See In re Stoecker*, 179 F.3d 546, 550 (7th Cir. 1999) (applying doctrine); *see also Weinert's Estate v. C.I.R.*, 294 F.2d 750, 752 (5th Cir. 1961) (same).

JI Aviation, Inc. v. Department of Revenue, an Illinois Appellate Court case, is particularly instructive. 335 Ill. App. 3d 905 (1st Dist. 2002). In that case, the court addressed whether an Illinois Use Tax exemption applied where petitioner, JI Aviation, purchased an aircraft from Richland Development Corp., a company that was not in the business of selling aircraft, and where Richland funneled the sale through Nationsbanc Leasing Corp., which was an aircraft retailer. *Id.*² at 907-08. Under the terms of the sale agreement, Richland was to transfer title to the aircraft through Nationsbanc in return for a separate aircraft, and then Nationsbanc was to deliver legal title to the original aircraft to JI Aviation and was to receive the purchase price. *Id.* at 908. On the sale closing date, JI Aviation directed that payment be wired to the escrow agent's account, following which Richland instructed the escrow agent to file the bill of sale which transferred title to the original aircraft to Nationsbanc. *Id.* The escrow agent then filed the bill of sale and had title to the original aircraft transferred from Nationsbanc to JI Aviation shortly thereafter. *Id.*

The Department of Revenue (the “Department”) issued a notice of Use Tax liability to JI Aviation, which despite JI Aviation's opposition, was affirmed by the administrative law judge (“ALJ”) and the director of the Department. *Id.* at 909. JI Aviation timely filed a complaint for review in the Circuit Court of Cook County. *Id.* at 909-10.

² Illinois law recognizes an exemption from Use Tax liability for isolated retail sales of tangible personal property by individuals not engaged in the business of the sale of that property. 35 ILCS § 120/1.

The Circuit Court reversed the ALJ and Department's decision. *Id.* at 910. The Circuit Court reasoned that "economic realities determine tax consequences and that the 'substance over form' doctrine requires that the use of a conduit, Nationsbanc, to transfer property must be ignored for Illinois tax purposes." *Id.* Applying this reasoning, the Circuit Court found that notwithstanding Nationsbanc's transfer of title to JI Aviation, Richland was the true seller and the sale was therefore a nontaxable occasional sale under the Illinois Use Tax Act. *Id.* The Department appealed.

On appeal, the Appellate Court affirmed the Circuit Court's decision. *Id.* at 923. In doing so, the Appellate Court found that Nationsbanc was a mere conduit through which title to the aircraft flowed in the transaction, and that the real seller for substantive purposes was Richland. *Id.* at 921-22. The Appellate Court took particular note of Nationsbanc's limited role in facilitating the transaction, and citing the Seventh Circuit's decision in *Comdisco, Inc. v. U.S.*, effectively "abandon[ed] the approach that binds a taxpayer to the labels given to a transaction in favor of an analysis that looks at the economic substance of the transaction." *Id.* at 920-21, citing *Comdisco, Inc. v. U.S.*, 756 F.2d 569, 578 (7th Cir. 1985).

The same reasoning applies here and dictates that the State (*i.e.*, Medicaid) is the true purchaser of Midwest Medical's products and services. The fact that Medicaid needs to contract with MCOs to deliver low-cost goods and services for patients should not destroy the exemptions afforded to those that contract with and sell to MCOs to provide those low-cost services and goods for patients receiving Medicaid benefits. It stands to reason, therefore, that if a vendor sells services or goods to an MCO and the vendor will ultimately be paid by Medicaid to cover the patients' needs, such sales should be nontaxable as sales to the ultimate buyer, Medicaid. Here, notwithstanding the existence of the MCO, the economic reality of the reimbursement process is that the State is paying the service provider with funds earmarked for Medicaid beneficiary use.

Midwest Medical's nebulizer and breast pumps sales during the Periods at Issue are therefore exempt from ROT.

Further, the economic realities dictate that it would be impossible for the MCOs to provide exemption certificates on every transaction they complete with Medicaid service providers, as Respondent contends is required. The limited number of MCOs servicing Illinois Medicaid patients (there are currently five servicing all of Cook County³) are too large and handle too many types of claims and cases. It would be wholly impracticable to expect them to maintain exemption certificates and provide them to service providers transaction-by-transaction. Moreover, whether the MCO has an active exemption identification number or not does not change the fact that payment is ultimately issued from the State to the provider.

The substance over form doctrine also applies in determining that the MCO is acting as an agent of the State in its facilitation of Medicaid services for patients and its use of State funds to pay providers. An agency relationship exists where "the principal has the right to control the agent's conduct and the agent has the power to act on the principal's behalf." *Union Planters Bank, N.A. v. FT Mortg. Companies*, 341 Ill. App. 3d 921, 928 (1st Dist. 2003). In determining whether an agency relationship exists, "[t]he right to control the manner of doing the work is the predominant factor." *Id.*

Here, the State exercises a significant degree of control over the MCOs, as evidenced by its standard-form, boilerplate contracts with the MCOs. (Stipulation of Facts and Other Matters, ¶ 39). Indeed, the model IDHFS-MCO contract includes seventy-three (73) pages of rules governing the MCO's operations in providing services to Medicaid enrollees. (Stipulation Ex. I, § 5 (pgs. 66-139)). These rules prescribe all aspects of an MCO's facilitation of Medicaid services, including

³ Stipulation Ex. G, 27:18-22.

but not limited to what covered services the MCO must provide and exclude, what providers the MCO may contract with, what standards the MCO must consider in evaluating potential providers, the technological platforms to be used in coordinating patient care, care management procedures, implementation of an interdisciplinary care team, limitations on care coordinator caseloads, transitioning patient care from one institution to another, the manner in which the MCO communicates with patients, among a litany of other State-controlled tasks. (*Id.*). While the standard-form contract also provides that the MCO is acting as an independent contractor and not as agent for the State, the substance of the State-MCO relationship surely dictates otherwise. (*Id.* at § 9.1.10 (pg. 166)).

Construing the MCO as an agent for the State, Midwest Medical's nebulizer and breast pump sales during the Periods at Issue are exempt because the sales were made to and paid for by a government body. 86 Ill. Admin. Code § 130.2080. This Tribunal should not countenance Respondent's efforts to distort the economic realities of the transaction in order to impose ROT liability on Midwest Medical. Midwest Medical is therefore entitled to summary judgment in its favor.

VI. Denial of the Exemption would Lead to Unjust and Inequitable Results for Medicaid Service Providers like Midwest Medical.

Additionally, adopting Respondent's interpretation of the ROT and § 130.2080 would have an absurd and unjust effect on Medicaid service providers like Midwest Medical. It is well-settled that in interpreting a statute, courts presume that the legislature did not intend an absurd, inconvenient, or unjust result. *Carver v. Sheriff of La Salle County*, 203 Ill.2d 497, 508 (2003).

In the instant case, to interpret § 130.2080 as not applying to Medicaid service providers that are reimbursed from an MCO, rather than the State directly, would unduly prejudice Midwest Medical and similarly-situated service providers. Specifically, such an interpretation would require

that Midwest Medical remit ROT to the State on its sales to Medicaid beneficiaries. This would substantially impact the servicer's ability to remain profitable because the service provider is prohibited from passing the ROT onto the ultimate consumer (*i.e.*, the Medicaid enrollee). Therefore, Midwest Medical would be forced to incur an additional cost without a corresponding means of offsetting it. (Ex. 1, Z. Buikema Aff., ¶¶ 9-10). Furthermore, Mr. Mendonsa testified that since implementation of MCOs into the Medicaid services delivery framework, there have been no adjustments to the IDHFS fee schedule to accommodate for the increased liability to service providers. (Stipulation Ex. G, 44:3-18).

In sum, without the ability to adjust its prices to pay ROT, service providers like Midwest Medical would see revenue significantly reduced, and may even make the decision that it can no longer afford to continue its service, thus reducing the number of providers to a disadvantaged population. Surely the legislature could not have intended such an unjust result. This Tribunal should reject Respondent's strained reading of the § 130.2080 exemption and enter judgment in favor of Midwest Medical.

CONCLUSION

For each and all of the foregoing reasons, Petitioner, Midwest Medical Equipment Solutions, Inc., respectfully requests that this Court grant this motion and enter summary judgment in its favor and against Respondent, the Illinois Department of Revenue, grant it all relief requested in its Petition, and grant it any further relief this Court deems just and proper.

Respectfully Submitted,

/s/ Kathleen M. Lach

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies pursuant to penalties of perjury as set forth in 735 ILCS 5/1-109, that he caused to be served the foregoing document on:

Seth J. Schriftman
Special Assistant Attorney General
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100 W. Randolph Street, 7th Floor
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Counsel for Respondent

via electronic mail on January 20, 2022.

/s/ Thomas A. Laser

Thomas A. Laser

EXHIBIT 1

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

MIDWEST MEDICAL EQUIPMENT SOLUTIONS, INC.,)	
)	
Petitioner)	
)	Case Nos. 17-TT-120; 19-TT-93; and
v.)	21-TT-77
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Chief Judge James M. Conway
)	
Respondent.)	

AFFIDAVIT OF ZAC BUIKEMA

The undersigned, Zac Buikema, does hereby declare under penalty of perjury under the laws of the United States, as follows:

1. My name is Zac Buikema. I am over the age of 21, and I have first-hand knowledge of the facts contained in this affidavit. I am willing and competent to testify to the statements set forth in this affidavit.

2. I am General Manager, Billing Manager, and Chief Operations Officer of Midwest Medical Equipment Solutions, Inc.

3. In my position with Midwest Medical, I am familiar with Illinois' implementation of managed care programs in the Medicaid health services delivery framework over approximately the last decade.

4. Prior to the implementation of the managed care program in Illinois, and even subsequent to it, Midwest Medical treated any sale of a nebulizer or breast pump to Medicaid recipients as exempt from Illinois sales tax, because they were in fact, Medicaid recipients.

Midwest Medical reported as such on its Illinois state tax returns for the periods at issue in this matter.

5. For the period of June 1, 2012 through December 31, 2012, Midwest Medical issued \$723,673.00 in nebulizers, breast pumps, and services related thereto to individuals in Illinois enrolled in Medicaid. This represented 79.3% of Midwest Medical's sales for that period of time. (A true and copy of Midwest Medical's ROT Audit Report for the June 1, 2012 through December 31, 2015 tax period is attached hereto as Exhibit A). I personally participated in reviewing Midwest Medical's sales records to calculate these figures, and these figures are true and correct to the best of my knowledge.

6. Since implementation of the managed care program, Midwest Medical has charged the fees set forth in the Illinois Department of Healthcare and Family Services ("IDHFS") published fee schedule for the products and services that it sells.

7. From a practical perspective, Midwest Medical cannot deviate from the fees in the published fee schedule if it wishes to carry on its sales of Medicaid patients in Illinois.

8. Midwest Medical cannot continue its business model by increasing fees for its Medicaid patients by 10%, or the amount it would need to cover the cost of the additional Retailers' Occupation Tax. It cannot as a practical matter charge its Medicaid patients for the tax.

9. Midwest Medical cannot charge its patients sales tax. It receives set payments from the managed care organizations ("MCOs"), which they receive from the State of Illinois through IDHFS.

10. Under the framework proposed by the Department, Midwest Medical would incur a 10% loss of revenue, the approximate sales tax rate, because it serves Medicaid patients.

11. Under this scenario, Midwest Medical would have to reevaluate whether it could continue to serve this disadvantaged population if this 10% “penalty” was imposed upon it.

FURTHER AFFIANT SAYETH NAUGHT.

January 20, 2022


Zac Buikema

General Manager, Billing Manager, and
Chief Operating Officer
Midwest Medical Equipment Solutions, Inc.

Affidavit Prepared By:

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EXHIBIT A



EDA-105-R ROT and E911 Surcharge Audit Report

Account ID 5516-2861
 Business name MIDWEST MEDICAL EQUIPMENT SOL
 Business address 7646 W 159TH ST
ORLAND PARK, IL 60462-5035

Processing period 06/01/2012 - 12/31/2015
 Interest through (issue) date 05/05/2017
 Earliest statute date 09/25/2017
 Audit period 06/01/2012 - 12/31/2015

Step 1: Taxes due per audit

Line numbers in Step 1 reflect those on Form ST-1.

Sales made from locations inside Illinois

Retailers/service occupation tax
 4b General merchandise 4b 41850
 5b Food and drug 5b 61265

Sales made from locations outside Illinois

Retailers/service occupation tax
 6b General merchandise 6b 0
 7b Food and drug 7b 0

Sales at other rates

Retailers/service occupation tax
 8b General merchandise 8b 0

Total tax due on receipts

11 Total tax due on receipts
 (Add Lines 4b through 8b.) 11 103115

Tax on purchases

Use tax on purchases
 12b General merchandise 12b -31942
 13b Food and drug 13b 0
 15 Total tax due on purchases
 (Add Lines 12b through 13b.) 15 -31942
 16 Total tax or credit due on
 receipts and purchases
 (Add Lines 11 and 15.) 16 71173
 21 E911 Surcharge 21 0
 22 Excess tax and excess
 surcharge collected 22 0
 23 Total tax and surcharge due
 (Add Lines 16, 21, and 22.) 23 71173

Step 2: Penalty and interest due

Lines 26 through 29 reflect penalty and interest based on the audit schedules.

26 Penalty on tax
 a Late-filing penalty 26a 0
 b Negligence penalty 26b 0
 c Fraud penalty 26c 0
 d Late-payment penalty 26d 11205
 27 Penalty on E911 Surcharge
 a Late-filing penalty 27a 0
 b Negligence penalty 27b 0
 c Fraud penalty 27c 0
 d Late-payment penalty 27d 0
 28 Interest on tax 28 5281
 29 Interest on E911 Surcharge 29 0

Step 3: Amount due or overpaid

30 Total due or overpaid
 (Add Lines 23, 26a-d, 27a-d, 28,
 and 29.) 30 87659

Step 4: Read and sign below

Under penalties of perjury, I state that I have examined this report and, to the best of my knowledge, it is true, correct, and complete. By signing this report, I waive the right to seek review by the Informal Conference Board.

 Taxpayer's signature Title Date

 Auditor's signature Title Date

Official use only. Do not write below this line.

Late-payment penalty (prior to 12/03) 0
 Tier 2 late-filing penalty _____
 Total audit payments _____
 MPC amount _____
 Audit ID number A1166911488
 Date received _____
 AL EL NF MA AD _____
 Remittance amount _____



EDA-104-R Multiple Location Schedule

(attach to EDA-105-R)

Account ID: 5516-2861 Processing Period: 06/01/2012 through 12/31/2015

Location code: <u>016 0053 2 001</u>	General merchandise	4b	<u>41850</u>
Site name: <u>MIDWEST MEDICAL EQUIPMENT SOLUTION</u>	Food, drugs, and medical appliances	5b	<u>61265</u>
Address: <u>7646 W 159TH ST</u>	Sales at other rates	8b	<u>0</u>
<u>ORLAND PARK, IL 60462-5035</u>	Late-file penalty	26a	<u>0</u>
	Negligence penalty	26b	<u>0</u>
	Fraud penalty	26c	<u>0</u>
	Late-payment penalty	26d	<u>15054</u>
	Interest on tax	28	<u>8256</u>

Location code: _____	General merchandise	4b	_____
Site name: _____	Food, drugs, and medical appliances	5b	_____
Address: _____	Sales at other rates	8b	_____
_____	Late-file penalty	26a	_____
_____	Negligence penalty	26b	_____
	Fraud penalty	26c	_____
	Late-payment penalty	26d	_____
	Interest on tax	28	_____

Location code: _____	General merchandise	4b	_____
Site name: _____	Food, drugs, and medical appliances	5b	_____
Address: _____	Sales at other rates	8b	_____
_____	Late-file penalty	26a	_____
_____	Negligence penalty	26b	_____
	Fraud penalty	26c	_____
	Late-payment penalty	26d	_____
	Interest on tax	28	_____

Completed by _____ Date 05/05/2017 Page 1 of 1

