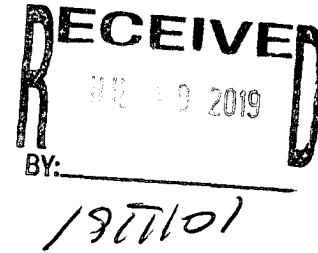


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

ASSOCIATED ENERGY GROUP LLC,)
)
Petitioner,)
)
v.)
)
THE ILLINOIS DEPARTMENT OF REVENUE,)
)
Defendant.)

No.



VERIFIED PETITION

Associated Energy Group LLC (“Petitioner”), by and through its attorneys, Fox Rothschild LLP and Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

1. For the tax period commencing January 1, 2014 and ending September 30, 2016 (“Period at Issue”), Petitioner was and currently is an aviation fuel provider and international trip support company delivering services to a variety of corporate, commercial, FBO, and government clients at 3000+ locations throughout the world. Petitioner’s principal business address was and currently is 701 NW 62nd Avenue, Suite 490, Miami, Florida 33126.

2. Petitioner is represented by Joseph Collins of Fox Rothschild LLP, 321 North Clark Street, Suite 1600, Chicago, Illinois 60654 and Fred O. Marcus and Christopher T. Lutz of Horwood Marcus & Berk Chartered, 500 West Madison Street, Suite 3700, Chicago, Illinois 60661. Mr. Collins can be reached at 312-517-9227 or by e-mail at jcollins@foxrothschild.com. Mr. Marcus can be reached by phone at 312-606-3210 or by e-mail at fmarcus@hmblaw.com. Mr. Lutz can be reached by phone at 312-405-3459 or by e-mail at clutz@hmblaw.com.

3. Petitioner’s FEIN is 84-1175406. Petitioner’s Illinois Account ID is 2206-6616.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

5. Unless otherwise stated, the following paragraphs relate solely to the Period at Issue.

LATE DISCRETIONARY HEARING GRANT

6. On June 18, 2019, the Department granted Petitioner a late discretionary hearing. A true and accurate copy of Petitioner's Late Discretionary Hearing Grant is attached and marked Exhibit A.

JURISDICTION

7. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100 and the Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 et. seq.

8. The amount of additional Retailers' Occupation Tax exceeds \$15,000 for the Period at Issue, thereby vesting jurisdiction in the Illinois Independent Tax Tribunal.

9. This Tribunal has jurisdiction over this matter pursuant to Sections 1-15, 1-45 and 1-50 of the Tribunal Act and Section 8 of the Retailers' Occupation Tax Act because Petitioner timely filed this Petition within 60 days of the grant of a late discretionary hearing.

BACKGROUND

10. Petitioner timely filed original Illinois Forms ST-1 Sales and Use Tax and E911 Surcharge Return for the Period at Issue and remitted to the Department the tax shown due on the returns.

11. During the Period at Issue, Petitioner was an aviation fuel provider and international trip support company delivering services to a variety of corporate, commercial, FBO, and government clients at 3000+ locations throughout the world.

12. During the Period at Issue, Petitioner made sales of aviation fuel to (i) resellers of aviation fuel (“Resellers”); (ii) air carriers to be used for consumption, shipment or storage in the conduct of their businesses as air common carriers for flights that were engaged in foreign trade or in trade between the United States and any of its possessions for the transportation of at least one individual or package for hire from an airport located in the state of Illinois to a city of final destination on the same aircraft, without regard to a change in the flight number of that aircraft (“Foreign Air Carriers”); (iii) exempt organizations and (vi) purchased aviation fuel from providers to whom it paid Retailers Occupation Taxes.

13. On each of its original Illinois Forms ST-1 Sales and Use Tax and E911 Surcharge Returns (“Returns”) for the Period at Issue, Petitioner excluded its sales of aviation fuel to Resellers, Foreign Air Carriers and exempt organizations from taxable receipts subject to Retailers’ Occupation Tax as sales for resale, sales to Foreign Air Carriers or sales to exempt organizations.

14. The Department audited Petitioner’s Returns and on November 9, 2018 issued its Notice of Audit Results for Sales, Use and Excise Taxes and Fees (“Audit Notice”) seeking additional Retailers’ Occupation Tax of \$1,705,705.88 for the Period at Issue. The Audit Notice indicated that a Notice of Tax Assessment would be issued. Petitioner, for reasons unknown, never received the Notice of Tax Assessment from the Department and, as a result, requested a late discretionary hearing, which request was granted on June 18, 2019.

15. In its Audit Notice, the Department assessed additional Retailers' Occupation Tax in the amount of (i) \$4,354.05, which it characterized as a "Receipts Adjustment" (ROT10/100), (ii) \$801,912.80, which it characterized as a "Resale Deductions Adjustment" (ROT/20-100), (iii) \$7,378.74, which it characterized as an "Exempt Organizations Deductions Adjustment" (ROT/23-100), and (iv) \$892,060.29, which it characterized as "Other Deductions Adjustment" (ROT/29-100). A copy of the Department's Sales Tax Audit System Summary Analysis, Global Taxable Exceptions Detail Report and Projected Data Results is attached and marked Exhibit B.

16. On April 24, 2019, the Department issued a Demand for Payment indicating unless Petitioner paid to the Department a sum of \$2,262,272.30, consisting of taxes in the amount of \$1,720,890.00, penalties in the amount of \$341,241, and interest in the amount of \$215,323.39, the Department may issue a levy against Petitioner's assets. On May 22, 2019, the Department issued a levy on one of Petitioner's bank accounts and withdrew the sum of \$2,083,211.49 from Petitioner's account at United Bank.

COUNT I

The Department's Notice Seeking Additional Retailers' Occupation Tax is Erroneous Because it Fails to Take into Account that Certain of Petitioner's Sales of Aviation Fuel to Resellers are Exempt Sales for Resale

17. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 16, inclusive, herein above.

18. The Retailers' Occupation Tax is imposed upon persons engaged in the business of selling tangible personal property at retail. 35 ILCS 120/2.

19. A "sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale. 35 ILCS 120/1; 86 Ill. Admin. Code 130.201(a)(1).

20. In determining whether a sale is for the purpose of resale, the seller shall request that the purchaser provide a resale number and certification that the sale is for resale. So long as the seller obtains a certificate of resale from the purchaser that contains all information required by Regulation Section 130.1405, the seller need not verify that the tangible personal property he sells for resale is actually resold. 86 Ill. Admin. Code 130.1401(a).

21. A certificate of resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. A certificate of resale must contain (1) the seller's name and address, (2) the purchaser's name and address, (3) a description of the items being purchased, (4) purchaser's signature and date of signing, (5) purchaser's registration number with the Illinois Department of Revenue or purchaser's resale number issued by the Department of Revenue. 86 Ill. Admin. Code 1405(b). If all of purchaser's purchases are for resale, a purchaser may provide a blanket Certificate of Resale. 86 Ill. Admin. Code 1405(c).

22. As indicated on Pages 1 and 2 of the Global Taxable Exceptions Detailed Report at Tax Code: 20 Exam Type: 100, Petitioner sold "Jet Fuel" to Avfuel Corporation, Mercury Air Group, Inc. (Mercury Fuels) and World Fuel Services, Inc.

23. Each of Avfuel Corporation, Mercury Air Group, Inc. (Mercury Fuels) and World Fuel Services, Inc. purchased aviation fuel from Petitioner for resale.

24. Each of Avfuel Corporation, Mercury Air Group, Inc. (Mercury Fuels) and World Fuel Services, Inc. has provided a blanket certificate of resale to Petitioner, copies of which are attached and marked Group Exhibit C.

25. Because Petitioner has obtained a blanket certificate of resale from each of Avfuel Corporation, Mercury Fuels and World Fuel Services, Inc. and because each of the aforementioned blanket resale certificates contains the information required by Ill. Admin. Code tit. 86, sec 1405(b), Petitioner's sales of aviation fuel to Avfuel Corporation, Mercury Fuels and World Fuel Services, Inc. must be deemed sales for resale by the Department and must be excluded from the Department's calculation of receipts subject to Retailer's Occupation Tax.

THEREFORE, Petitioner requests that the Tribunal enter an order that:

a) Finds that the Department's proposed tax assessment is legally erroneous and that Petitioner's sales of aviation fuel to Avfuel Corporation, Mercury Fuels and World Fuel Services, Inc., are sales for resale and, as such, are exempt from the imposition of Retailers' Occupation Tax;

b) Enters judgment in favor of Petitioner and against the Department and orders the Department to withdraw its assessment of tax and refund \$801,912.80 plus interest and penalty to Petitioner;

c) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the Order of this Tribunal; and

d) Orders such further relief as this Tribunal deems appropriate.

COUNT II

The Department's Notice Seeking Additional Retailers' Occupation Tax is Erroneous Because it Fails to Take into Account that Certain of Petitioner's Sales of Aviation Fuel are Exempt as Sales to an Air Common Carrier for Consumption in Foreign Trade

26. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 25, inclusive, herein above.

27. Beginning July 1, 2013, fuel and petroleum products sold to or used by an air carrier, certified by the carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight that (i) is engaged in foreign trade or is engaged in trade between the United States and any of its possessions and (ii) transports at least one individual or package for hire from the city of origination to the city of final destination on the same aircraft, without regard to a change in the flight number of the aircraft, are exempt from the imposition of Retailers' Occupation Tax. 35 ILCS 105/3-5; 35 ILCS 120/2-5.

28. Petitioner sold aviation fuel to each of the air carriers listed on Pages 2 and 3 of the Global Taxable Exceptions Detailed Report at Tax Code: 29 Exam Type: 100, to be used by the air carrier for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight that (i) is engaged in foreign trade or is engaged in trade between the United States and any of its possessions, and (ii) transports at least one individual or package for hire from the city of origination to the city of final destination on the same aircraft, without regard to a change in the flight number of the aircraft

29. Each of the air carriers, listed on Pages 2 and 3 of the Global Taxable Exceptions Detailed Report at Tax Code: 29 Exam Type: 100, has certified that the aviation fuel purchased from Petitioner was used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight that (i) is engaged in foreign trade or is engaged in trade between

the United States and any of its possessions and (ii) transports at least one individual or package for hire from the city of origination to the city of final destination on the same aircraft, without regard to a change in the flight number of the aircraft.

30. Attached and marked Group Exhibit D is a certification from each of the air carriers, listed on Pages 2 and 3 of the Global Taxable Exceptions Detailed Report at Tax Code: 29 Exam Type: 100, certifying that the aviation fuel purchased from Petitioner was used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight that (i) is engaged in foreign trade or is engaged in trade between the United States and any of its possessions, and (ii) transports at least one individual or package for hire from the city of origination to the city of final destination on the same aircraft, without regard to a change in the flight number of the aircraft.

31. Because each of the air carriers listed on Pages 2 and 3 of the Global Taxable Exceptions Detailed Report at Tax Code: 29 Exam Type: 100 has certified that aviation fuel purchased from Petitioner was used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight that (i) is engaged in foreign trade or is engaged in trade between the United States and any of its possessions and (ii) transports at least one individual or package for hire from the city of origination to the city of final destination on the same aircraft, without regard to a change in the flight number of the aircraft, Petitioner's sales of aviation to such air carriers are exempt from the imposition of Retailer's Occupation Tax.

THEREFORE, Petitioner requests that the Tribunal enter an order that:

a) Finds that the Department's proposed tax assessment is legally erroneous and that Petitioner's sales of aviation fuel to each of the air carriers listed on Pages 2 and 3 of

the Global Taxable Exceptions Detailed Report at Tax Code: 29 Exam Type: 100 are exempt from the imposition of Retailers' Occupation Tax;

b) Enters judgment in favor of Petitioner and against the Department and orders the Department to withdraw its assessment of tax and refund \$892,060.29 plus interest and penalty to Petitioner;

c) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the Order of this Tribunal; and

d) Orders such further relief as this Tribunal deems appropriate.

COUNT III

The Department's Notice Seeking Additional Retailers' Occupation Tax is Erroneous Because it Fails to Take into Account that Certain of Petitioner's Sales of Aviation Fuel to Governmental Bodies, whether Federal, State or Foreign, are Exempt from Tax

32. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 31, inclusive, herein above.

33. On and after January 1, 2015, sales of tangible personal property made to a governmental body (federal, state or foreign) are exempt from Retailers' Occupation Tax only if the governmental body has an active exemption identification number ("E-number") issued by the Department of Revenue and it provides the E-number to the retailer who records the number instead of collecting the tax. Regulation Section 130.2080.

34. As listed on Pages 2 of the Global Taxable Exceptions Detailed Report at Tax Code: 23 Exam Type: 100, the Department alleges that Petitioner sold aviation fuel to Kropp Holdings on April 30, 2016 and July 30, 2016 in the amounts of \$15,581.44 and \$62,987.06, respectively.

35. Kropp Holdings (a/k/a KH Inc.) creates and delivers global solutions to support fuel procurement in the transportation industry and is under contract with the United States Defense Logistics Agency-Energy for the technology and operation of Air Card which connects government aircraft with fuel suppliers for fuel procurement; processes all transactions securely and according to industry and government standards; provides merchant tools; and enables full reporting and audit.

36. Petitioner is an authorized merchant for Kropp Holdings.

37. As an authorized merchant for Kropp Holdings, Petitioner has agreed to sell and has sold aviation related products and services, including aviation fuel, to authorized holders of the U.S. Government Air Card.

38. A sale of aviation related products and services, including aviation fuel to an authorized holder of the U.S. Government Air Card is a sale to the U.S. Government for which Petitioner has accepted the U.S. Government Air Card in payment.

39. Pursuant to the Air Card Acceptance Operating Procedures, a copy of which is attached and marked Exhibit E, Kropp Holdings makes payments to Petitioner for sales of aviation related products and services made to the Defense Logistics Agency for which it has accepted the U.S. Government Air Card.

40. The Defense Logistics Agency is an authorized holder of the U.S. Government Air Card and holds active Exemption Identification Number E99256290.

41. Because the Defense Logistics Agency holds active Exemption Identification Number E99256290, Petitioner's sales of aviation fuel to the Defense Logistics Agency, for which it has accepted the U.S. Government Air Card, are exempt from the imposition of Retailers Occupation Taxes.

THEREFORE, Petitioner requests that the Tribunal enter an order that:

a) Finds that the Department's proposed tax assessment is legally erroneous and that Petitioner's sales of aviation fuel to the Defense Logistics Agency through Kropp Holdings's U.S. Government Air Card, listed on Pages 2 of the Global Taxable Exceptions Detailed Report at Tax Code: 23 Exam Type: 100, are exempt from the imposition of Retailers' Occupation Tax; and

b) Enters judgment in favor of Petitioner and against the Department and orders the Department to withdraw its assessment of tax and refund \$5,971.21 plus interest and penalty to Petitioner;

c) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the Order of this Tribunal; and

d) Orders such further relief as this Tribunal deems appropriate.

COUNT IV

The Department's Notice Seeking Additional Retailers' Occupation Tax is Erroneous Because it Fails to Take into Account Purchases of Aviation Fuel Upon Which Tax was Charged by the Vendor

42. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 41, inclusive, above.

43. Petitioner purchased aviation fuel from each of the entities listed on Page 1 of the Global Taxable Exceptions Detailed Report at Tax Code: 10 Exam Type: 100.

44. The Department assessed additional tax on Petitioner's purchases of aviation fuel from the listed suppliers because Petitioner did not produce invoices indicating that tax had been charged.

45. Attached and marked Group Exhibit F are invoices from World Fuel Services, Inc., Signature Flight Support, and Gaitros Aviation, LLC indicating that tax had been charged on Petitioner's aviation fuel purchases.

46. Each of the amounts invoiced to Petitioner by World Fuel Services, Inc., Signature Flight Support, and Gaitros Aviation, LLC, including the Retailers Occupation Taxes charged, has been paid by Petitioner.

THEREFORE, Petitioner requests that the Tribunal enter an order that:

a) Finds that the Department's proposed tax assessment is legally erroneous and that Petitioner's purchases of aviation fuel from each of listed suppliers on Page 1 of the Global Taxable Exceptions Detailed Report at Tax Code: 10 Exam Type: 100 has been paid by Petitioner; and

b) Enters judgment in favor of Petitioner and against the Department and orders the Department to withdraw its assessment of tax and refund \$4,354.05 plus interest and penalty to Petitioner;

c) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the Order of this Tribunal; and

d) Orders such further relief as this Tribunal deems appropriate.

COUNT V

Penalties Should be Abated Based on Reasonable Cause and Good Faith

47. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 46, inclusive, herein above.

48. In the Notice of Audit Results, the Department assessed Late Payment Penalties of \$341,141.15.

49. Illinois law provides that late payment penalties shall not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 734-8.

50. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 700.400(b).

51. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

52. Petitioner timely filed its original Illinois Forms ST-1 Sales and Use Tax and E911 Surcharge Return for the Period at Issue and remitted to the Department the tax shown due on the returns.

53. Petitioner made a good faith effort in determining its tax obligations for the Period at Issue.

54. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that its sales of fuel constituted exempt Illinois sales.

55. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

THEREFORE, Petitioner requests that the Tribunal enter an order that:

a) Finds and declares that the late payment penalties should be abated based on reasonable cause;


b) Enters judgment in favor of Petitioner and against the Department and orders the Department to abate the penalty imposed and refund \$341,141,15 to Petitioner; and

c) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the Order of this Tribunal; and

d) Orders such further relief as this Tribunal deems appropriate.

Respectfully submitted,

ASSOCIATED ENERGY GROUP LLC


By: 
One of Petitioner's Attorneys

Joseph Collins (jcollins@foxrothschild.com)
Fox Rothschild LLP
321 North Clark Street, Suite 1600
Chicago, Illinois 60654
312-517-9227

Fred O. Marcus (fmarcus@hmblaw.com)
Christopher T. Lutz (clutz@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, Illinois 60661
(312) 606-3200

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Verified Petition are true, accurate and correct.

By:  _____

Name: Chris Clementi

Its: Chief Operating Officer

EXHIBIT A



**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

Willard Ice Building
101 West Jefferson Street – Level 5SW
Springfield, IL 62702
(217)782-6995

June 18, 2019

Fred Marcus
Horwood Marcus & Berk Chartered
500 West Madison Street, Suite 3700
Chicago IL, 60661

Joseph Collins
Fox Rothschild LLP
321 North Clark Street, Suite 1600
Chicago, IL 60654

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Associated Energy Group LLC
Account ID: 2206-6616
Notice of Tax Liability
Letter ID: CNXXXX8986143529, November 21, 2018

Dear Mr. Marcus and Mr. Collins:

The office of Administrative Hearings of the Illinois Department of Revenue received your client's request for a late discretionary hearing on behalf of Associated Energy Group 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 of Tax Liability.

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 and contact them if you have any questions.

Sincerely,

Terry D. Charlton
Chief Administrative Law Judge

TDC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing Verified Petition to be served upon other counsel of record herein by causing the same to be delivered by messenger before the hour of 5:00 p.m. on the 19th day of July, 2019.

James R. Reynolds
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
James.R.Reynolds@Illinos.gov



IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

ASSOCIATED ENERGY GROUP LLC,)
)
Petitioner,)
)
v.)
)
THE ILLINOIS DEPARTMENT OF REVENUE,)
)
Defendant.)

No.

RECEIVED
JUL 19 2019
BY: _____
1977101


NOTICE OF FILING

To: James R. Reynolds
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
James.R.Reynolds@Illinos.gov

PLEASE TAKE NOTICE that on the 19th day of July, 2019, we filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, IL 60601, Associated Energy Group LLC's **Verified Petition**, a copy of which accompanies this notice and is served on you herewith.

Respectfully submitted,

ASSOCIATED ENERGY GROUP LLC

By: 

One of Its Attorneys

Fred O. Marcus (fmarcus@hmblaw.com)
Christopher T. Lutz (clutz@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, Illinois 60661
(312) 606-3200