

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

JACKSON OIL & SOLVENTS INC.,)	
Petitioner)	
)	
V)	No. 14 TT 73
ILLINOIS DEPARTMENT)	Judge Brian F. Barov
OF REVENUE,)	
Respondent)	
)	

ANSWER

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Respondent’s Petition states as follows:

1. Petitioner is an Indiana corporation in the business of purchasing and supplying certain fuel products and equipment.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

2. During the period of December 5-31, 2013, Petitioner purchased Diesel Blend product from Marathon Petroleum Company, LP (“Marathon”) in Robinson, Illinois to be exported to Indiana.

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. As Petitioner does not have an Illinois distribution license for such fuels, Marathon invoiced Petitioner charges for Illinois Motor Fuel tax for each of the above mentioned purchases, totaling \$17,088.45. Additionally, Marathon invoiced Petitioner charges for

Indiana Motor Fuel Taxes for these purchases, which effectively double taxed the product.

ANSWER: The Department denies the Petitioner's claim that the product was "double taxed", which is vague and conclusionary. The Department admits the remaining allegations in paragraph 3 of the petition

4. Subsequently, Petitioner filed Form RMFT-11-A with the Illinois Department of Revenue ("Department") for refund of the Illinois Motor Fuel Tax. Attached hereto as Exhibit A is a copy of the RMFTA-11-A submitted by Petitioner.

ANSWER: The Department admits the allegations in paragraph 4 of the petition.

5. Citing the need for further evidence of Petitioner's payments of the Indiana Motor Fuel Taxes, the Department denied the above refund claim. Attached hereto as Exhibit B is a copy of the Department's request.

ANSWER: The Department admits that attached as Exhibit B is a copy of the Department's Form ETS-43 (apparently with some written notations at the bottom added by the Petitioner) sent to the Petitioner. The Department states that the document speaks for itself and denies any remaining allegations in Paragraph 5 of Petitioner's Petition.

6. Petitioner again submitted the claim to the Department, with copies of the invoices reflecting the dual taxation, payments of the relevant Illinois and Indiana taxes, and a notarized letter from Marathon stating that the invoices charged petitioner dual taxes. Attached hereto as Exhibit C is a copy of these submissions from Petitioner to the Department.

ANSWER: The Department admits that attached as Exhibit C to the Petition are copies of certain submissions from the Petitioner to the Department. The Department states that the documents speak for themselves and denies all remaining allegations in paragraph 6 of the petition.

7. The Department again denied Petitioner's refund claim stating that "Claimant did not pay Motor Fuel Tax to Indiana, therefore; this precludes you from receiving a Motor Fuel Tax Refund". Attached hereto as Exhibit D is a copy of the Department's denial.

ANSWER: The Department admits that attached as Exhibit D to Petitioner's petition is a copy of the Department's denial of the Petitioner's refund claim. The Department states that the denial speaks for itself and denies all further allegations in paragraph 7 of the petition.

8. Petitioner then filed a protest with the Office of Administrative Hearings; however, this protest was dismissed on March 25, 2014, due to lack of jurisdiction because, under 35 Ill. Comp. Stat. 1010/1-45 this Tribunal has jurisdiction over Petitioner's claim as it is in excess of \$15,000. Attached hereto as Exhibit E is a copy of the dismissal from the Office of Administrative Hearings.

ANSWER: The Department admits that it dismissed the Petitioner's protest and that a copy of the dismissal is attached to the petition as Exhibit E. The Department denies the legal conclusions and all other allegations in paragraph 8 of the petition.

9. Therefore, under 35 Ill. Comp. Stat. Sec. 1010/1-45 this Tribunal has jurisdiction to hear Petitioner's refund claim.

ANSWER: The allegations in paragraph 9 of the petition consist of legal conclusions and are denied.

10. Petitioner incorporates herein paragraphs 1-9 of this Petition.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 9 as though fully set forth herein.

11. Under 35 Ill. Comp. Stat. 505/13, upon the Department's receipt of adequate evidence, "any person who purchases motor fuel in Illinois and uses that motor fuel in another state and that state imposes a tax on the use of such motor fuel shall be reimbursed and repaid the amount of Illinois tax paid...

ANSWER: The allegations in paragraph 11 of the petition consist of legal conclusions and are denied.

12. Petitioner provided such adequate evidence by submitting to the Department the information contained in Exhibit C, all of which reflect charges for both Illinois and Indiana taxes, along with payment for Indiana taxes.

ANSWER: The allegations in paragraph 12 of the petition consist not of material allegations of fact, but of factual and legal conclusions and are therefore denied.

13. Although the Department requested certified tax returns from Petitioner, it is impossible for Petitioner to comply with such request because the State of Indiana does not require Petitioner to file a return on Diesel products. Under Indiana excise laws, Marathon is responsible for collecting the tax from Petitioner and remitting the collected tax to the State of Indiana in monthly reports.

ANSWER: The allegations in paragraph 13 of the petition consist not of

material allegations of fact, but of factual and legal conclusions and are therefore denied.

14. Therefore, the Department erroneously denied Petitioner's refund request after receiving adequate evidence of dual taxation with respect to the invoices covering the period of December 5-21, 2013.

ANSWER: The Department denies the allegations in paragraph 14 of the petition.

15. Therefore, based on the invoices contained in Exhibit C, which show both proof of Indiana tax charges and payment of such charges, Petitioner requests relief from Illinois Motor Fuel tax charges in the amount of \$17,088.45.

ANSWER: The Department denies the conclusions and any other allegations in paragraph 15 of the petition and respectfully requests that the Independent Tax Tribunal deny the relief requested by the Petitioner.

16. Petitioner has tendered the statutory fee payable to the Illinois Independent Tax Tribunal with this Petition.

ANSWER: The Department admits the allegations in paragraph 16 of the petition.

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

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
 - b. finding that the Department properly denied the claim for refund of Illinois Motor Fuel Tax at issue;
 - c. ordering judgment in favor of the Department and against the Petitioner;
- and

granting such further relief as this Tribunal deems appropriate under the
circumstances.

Respectfully Submitted,

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State of Illinois

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CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on June 4, 2014 the Department's ANSWER was served on Petitioner, by causing a copy to be sent by electronic mail to Fred D. Otte, Clark Quinn Moses Scott & Grahn, LLP, at fotte@clarkquinnlaw.com and by causing a second copy to be mailed to Monica Heath, President, Jackson Oil & Solvents, Inc. 1970 Kentucky Ave., Indianapolis IN 46221 by first class mail, postage prepaid.

A handwritten signature in black ink, appearing to read "George Foster", is written over a horizontal line.