ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

MARATHON PETROLEUM CORPORATION LP,	)	
Petitioner,	)	
	)	**Case No. 14-TT-88**
	)	**Chief Judge James M. Conway**
ILLINOIS DEPARTMENT OF REVENUE,	)	
Respondent.	)	

ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE TO
PETITIONER'S MOTION TO COMPEL

Now comes the State of Illinois, Department of Revenue ("Department"), by and through its attorney, LISA MADIGAN, Illinois Attorney General, and responds to Petitioner's Motion to Compel as follows:

Background

In July 2011, the Department began a sales tax audit of Petitioner, Marathon Petroleum Corporation ("Marathon"). The audit covered the periods January 1, 2009 through June 30, 2011. During that time and as relevant to this matter, Marathon did two things, one, it sold gasoline as a retailer to large bulk fleets who were end users, and two, it sold gasoline for resale as a wholesaler or distributor to its Marathon branded gas station dealers throughout the State. While affiliated with Marathon through some type of licensing or franchise agreement, the Marathon dealers were not owned or operated by Marathon but instead were independent dealers, i.e., typical of any franchise arrangement.

Under Illinois law, Marathon's sales for resale of gasoline to its franchisee dealers, like all sales for resale, were not taxable. See 35 ILCS 120/1 (definition of "sale at retail"). Marathon's sales to its bulk user customers were taxable since the bulk users were not gasoline

dealers but end users. *Id.* Illinois, like most states with a sales tax, provides an exemption from sales tax for all sales to charities and other exempt entities like governmental bodies, etc. 35 ILCS 120/2-5(11). However, the exemption is conditioned on the entity having a valid tax exempt identification number with the Department. *Id.* When such charities or other government bodies make most retail purchases, retailers will not charge tax if the tax exempt customer produces a valid exemption certificate at the point of sale. *Id.* 86 Ill.Adm.Code § 130.2007; 86 Ill.Adm.Code 130.2005(d)(1), (d)(2). If the retailer is shown an exemption certificate, it will not, or at least should not, collect any sales tax. 86 Ill.Adm.Code § 130.2007.

However, whenever such sales tax exempt entity purchases gasoline from a dealer at the pump, there is no way or method to back out sales tax from the purchase price and so the entity will end up paying the tax, at least where it pays in cash. For credit card sales, which are the focus of the dispute here, the issue is a little more complicated because of all the parties involved. To that end, the Department announced in a 1998 General Information Letter or GIL how the issue should be handled. See ST 98-0304-GIL, available on the Department's website:

> Under Illinois law, there is a method by which the government can purchase motor fuel without paying the motor fuel tax. The tax would be collected at the pump because it is included within the price of the gasoline. The retailer would then submit the credit receipt to the bank who would reimburse the retailer for the gas less the amount of tax. The bank would also bill the government for only the amount of gas and not include any tax. The retailer would then give the credit card receipts to the distributor who would then report the sale as an exempt sale to the government. No motor fuel tax is actually paid under this scenario.
>
> If Retailers' Occupation Tax and Use Tax is paid, a claim for credit would have to be filed by the taxpayer. Enclosed is a copy of 86 Ill. Adm. Code 130.1501, which describes the procedures used to obtain a credit for sales tax that is erroneously paid. Please note that only persons who have actually paid tax to the Department can file a claim for credit. Since retailers usually pay the tax to the Department, usually only retailers can file a claim for credit.

ST 98-0304-GIL, 1998 WL 854815 (Ill. Dept. Rev.) This general information letter was issued in response to a ruling request, apparently from a law or accounting/consulting firm on behalf of their unidentified client. As the letter indicates, the Department stated that credit card issuer was supposed to only reimburse the gasoline retailer/dealer for the gasoline, net of tax. Then the credit card issuer/bank would bill the tax exempt government entity/customer for the price of the gas, net of tax. Finally, the fuel distributor, after receiving the receipts from the gasoline retailer/dealer, submits the receipts to the State, showing the sale as exempt. *Id.* But as the second paragraph discusses, if tax is paid, then only the entity actually paying the tax can claim the refund. See also 86 Ill.Adm.Code § 130.1501.

Despite this ruling having been issued and publicly available, Marathon apparently chose to recoup the overpayment of tax by the Marathon dealers tax exempt customers in a completely different, and ultimately improper manner. Perhaps in an attempt to alleviate or minimize the record keeping requirements for Marathon dealers, Marathon reimbursed the dealers for the entire amount of exempt sales. The dealers then in turn remitted that amount (which included tax on sales to tax exempt customers) to the Department. Finally, and in an attempt recover the overpaid sales tax, Marathon offset the overpayment against its sales tax liability incurred on its retail gasoline sales to its bulk or end users. There is no dispute that Marathon's sales to its bulk or end users were unrelated to its gasoline sales for resale to the Marathon dealers. As indicated above, Marathon had two types of transactions, at least for purposes of this matter, i.e., sales for resale to its dealers and sales at retail to bulk users. The Department denied Marathon's attempt to offset the sales tax due on retail sales to its end user/bulk sale customers with or against the sales tax it paid its dealers on their exempt sales at the pump to governmental and other exempt customers.

As indicated above, the two types of transactions Marathon engaged in are completely unrelated. Marathon's bulk sales have nothing to do with the reimbursements at issue to its dealers. When Marathon sold fuel to Marathon dealers, it was acting in the capacity as fuel distributor, making gasoline sales for resale to Marathon branded dealers. But when it sold fuel in bulk, it was acting in the capacity as a retailer making sales to end users.

What it attempted to do here was offset the overpaid sales tax it previously paid to its dealers against unrelated sales tax due on retail sales to its bulk end user/customers.

Overpayment Provision Does Not Apply

Marathon in its Motion to Compel invoked Section 2505-275 from the Civil Administrative Code of Illinois. The provision, titled "Tax Overpayments" gives the Department general power to move or apply a taxpayer's overpayment in one type of tax administered by the Department, like income tax, to another tax also administered by the Department such as sales tax. 20 ILCS 2505-275. The provision also allows the Department to offset any state tax overpayment of a taxpayer against any federal income tax liability. *Id.* The second provision is not at issue here.

Marathon's first problem is that it does not have an overpayment of its own tax liability. Rather, Marathon over paid its <u>dealers'</u> tax liability. Each Marathon dealer is a separate taxpayer with its own filing and reporting requirements. Marathon overpaid its dealers taxes, not its own. While Marathon does not dispute this, it argues that Section 25050-275 can be read to require the Department to apply the dealers' overpayment to Marathon's unrelated sales tax liability. This provision can never and will never apply to this situation.

First, Marathon overpaid a third party's liability, not its own. It was the dealer's who actually remitted the taxes on exempt sales, even if the funds actually came from Marathon.

Nothing in the language in the provision itself suggests that the legislature intended to give the Department authority to apply an overpayment from one taxpayer to another. Under the confidentiality provision of the Retailers' Occupation Tax Act ("ROTA") the Department would be precluded from sharing any of the dealers' tax information with Marathon, yet under Marathon's interpretation, the Department is required to apply the Dealer's overpayment to Marathon's liability. 35 ILCS 120/11 (all tax information received from returns or Department investigations is confidential). This would represent an extreme if not bizarre interpretation. In construing ambiguous statutes, courts are to avoid any interpretation that results in an absurd result. *Town of Naples v. County of Scott*, Ill.App.3d 186, 190-91, 443 N.E.2d 799 (4th Dist. 1982)(Appellate Court held that Scott County Board of Commissioner's interpretation of Election Code was absurd). It is difficult to believe the legislature intended to require the Department to apply, at taxpayer's request, overpayments made by a third party to the taxpayer's own unrelated liability, especially since the Department would be precluded from sharing tax information with any third party.

Another independent obstacle to Marathon's interpretation is the language of Section 2505-275 itself. Specifically, the Department can only credit or apply the overpayment against a "final tax liability." 20 ILCS 2505/2505-275. While "final tax liability" is not defined in this section, or for that matter anywhere in the Department of Revenue Section of the Civil Administrative Code, the ROTA provides when a Notice of Tax Liability becomes a "final assessment." See 35 ILCS 120/4 and 120/5("If a protest to the notice of tax liability and request for a hearing thereon is not filed within 60 days after such notice, such notice of tax liability shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment.")

It is clear therefore that Marathon's sales tax liability is not a "final tax liability" within the meaning of the Section 2505-275. The liability reported by Marathon on its sales tax returns is not final because it is subject to adjustment by the Department and/or amendment by Marathon for 3 to 3½ years. 35 ILCS 120/4 (statute of limitations for Department to issue Notice of Tax Liability); 35 ILCS 120/6 (statute of limitations for taxpayers to file refund claim). Consequently, even if the other obstacles to application of Section 2505-275 did not exist, it would not apply here in any event.

The final obstacle to application of this provision here is that Marathon essentially created or devised its own method of recouping an overpayment of sales tax. Even if Marathon were trying to recover its own taxes, as opposed to a third party's taxes, its method of offsetting unrelated sales tax liability against it's the overpaid taxes on sales made by Marathon dealers, would not work. Taxpayers must follow the Department's procedure and use its designated forms in seeking a refund. 35 ILCS 120/6a; *Armour Pharmaceutical Company v. Illinois Department of Revenue*, 321 Ill.App.3d 662, 668, 748 N.E.2d 265 (1st Dist. 2001)(Even though taxpayer overpaid use tax on its purchases of exempt alcohol, it could not get a refund of its overpaid tax because it did not file a proper refund claim. "Accordingly, we affirm the Department's finding that Armour's proper remedy is to file a refund claim in accordance with section 6 of the Retailer's Occupation Tax Act.").

Under the voluntary payment doctrine, taxpayers can only recover taxes voluntary paid or remitted to the Department when authorized by statute. *Geary v. Dominick's Finer Foods, Inc.*, 129 Ill.2d 389, 393 (1989). So even if Marathon were the taxpayer who made the overpayment, it was required to follow the statute and Department rules on refund claims. The only statute authorizing a refund of the taxes Marathon voluntarily paid is the refund claim provisions of the

ROTA. See 35 ILCS 120/6a, 6b, 6c. By creating its own methodology recoup the overpaid tax, Marathon was not following the refund provisions of the ROTA or the Department's rules.

The statute Marathon attempts to rely on, Section 2505-275, of the Department of Revenue Law does not, and will not ever apply to a situation like this. It was designed to allow or permit (but not require, since it used the permissible "may" vs mandatory "shall") the Department to apply a tax overpayment from one taxing act to another. And even then, only when the liability being offset is final. Marathon's interpretation, while perhaps based on an equitable principle, simply stretches this provision too far. Since this provision was never and will never apply to a situation like this, the information Marathon requested will never be relevant, nor will it ever lead to relevant evidence. Consequently, Marathon's Motion to Compel should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Response to Petitioner's Motion to Compel upon:

Michael J. Wynne / Adam Beckerink
Reed Smith LLP
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By email attachment to mwynne@reedsmith.com and abeckerink@reedsmith.com on April 20, 2015.

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Michael Coveny,
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