ILLINOIS INDEPENDENT

TAX TRIBUNAL

MARATHON PETROLEUM COMPANY LP, Petitioner,	)	
v.	)	14 TT 88
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	

ORDER ON MOTION TO QUASH TAKING OF DEPOSITION

On January 15, 2016, the Department filed a motion to quash the taking of the deposition by Marathon of a representative of the Department who has knowledge of the Department's ability to credit taxpayers' accounts when a tax overpayment has been made. On February 15, 2016, Marathon filed its response to the motion to quash.

1. The Gasoline Transactions at Issue

This matter is currently in a discovery phase and no final proofs of evidence have been submitted by the parties. However, the core transactions which are at issue in this case can be adduced through the Petition and the Answer which have been filed and the core transactions appear to be incontrovertible, although the parties remain free to argue otherwise.

Marathon, a wholesaler distributor of gasoline to Marathon-branded independent dealer gas stations, undertook a course of action in the time period in question, January 2009 through July 2011, to insure that qualified purchasers of

gasoline at the pumps who were exempt from paying sales tax[1] did not pay any sales tax when they paid for gas by credit card.

Marathon followed a procedure by which qualified exempt end-purchasers of gasoline at a pump would pay full price, including sales tax, on a fleet credit card when filling their tanks. A third party payment processor, Heartland Payments, would receive the daily credit card transactions from the gas stations and transmit transactional data to both Marathon and to various credit card issuers whose cards were used by the gas purchasers. The credit card issuers, in turn, would transmit to Marathon payment for the fuel purchases, less the amount of sales tax on purchases made by the exempt end-purchasers. Marathon then paid the independent dealers the full pump price, including sales tax, for the gas purchases.

The net effect for a qualified exempt purchaser, such as a local police department, was that it would not be charged for sales tax as the sales tax amount was deducted from each purchase by its credit card company before the credit card company sought payment from that qualified exempt purchaser.

The net effect for the independent dealer was that they incurred no additional expenses. Marathon paid them the full pump price, including sales tax. According to paragraph 17 of the Petition, the independent dealers would file their monthly Illinois sales tax returns without delineating exempt sales from non-exempt sales. Because Marathon provided full payment, including an amount equal to the sales tax to the dealers, the dealers received payment from Marathon that they were entitled for the gas transaction and an additional amount equal to sales tax for the exempt sales that they passed on to the Department when they filed their monthly sales tax returns.

The net effect for Marathon is that because it was paid the net gasoline transaction price by the credit card companies on exempt transactions, but included an amount equal to the sales tax on those transactions in the overall amount paid to the independent dealers when settling those gasoline transactions, it was "out" an amount equal to the sales tax on the exempt transactions.

In an effort to recoup its payments made to the independent dealers that were passed on to the Department as sales tax on otherwise exempt sales,

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[1] Certain entities including certain governmental, charitable, religious and educational entities are exempt from paying Illinois sales tax (R.O.T.) on certain purchases. 35 ILCS 120/2-5(11). For example, in the very helpful and illustrative charts provided as Exhibit A to the Petition, Marathon uses a police patrol car at a Marathon pump to explain the purchase transactions at issue.

Marathon attempted to take a credit in like amount from its own sales tax liability when filing its own sales tax returns with the Department. Following an audit, the Department denied Marathon's claims and the current litigation before the Tribunal ultimately ensued.

2. The Issues Before the Tribunal

The core issue in this case is whether or not Marathon is entitled to claim a credit against its own sales tax liability for the amounts Marathon paid to its independent dealerships in presumably an amount equal to sales tax on the gas station transactions when those gas station transactions were conducted by qualified exempt end-users.

The Department argues that the payments to the dealers are unrelated, from a taxation point of view, to the gas pump transactions, and only a retailer, like an independent Marathon dealer, is entitled to claim credits for sales tax when that retailer overpays the Department. The Department draws a distinction between unrelated bulk gasoline sales made by Marathon and its sales made to the dealers and says the two cannot be combined for purposes of paying Marathon's current claim as Marathon is not a retailer who overpaid its own taxes. The Department further argues that a General Information Letter, ST-98-0304-GIL, which was available during the tax periods in question, spelled out procedures which guided gas distributors and retailers to end up with the net result that Marathon attempted to achieve, but that Marathon chose its own methodology which can't be squared with Illinois' tax statutes and regulations, including those relating to retailers accounting for tax exempt sales and the use of exemption certificates.

Marathon paints a slightly fuller picture of the core issue and claims that the State has been unjustly enriched as the State now has in its coffers an amount paid in by the independent dealers as sales tax on what otherwise should have been qualified exempt sales when the gas was pumped. Marathon argues that if Marathon were to be paid on its claim, the State would be in the exact position it should be at the end of the day, having collected sales tax on non-exempt gas purchases and not collecting sales tax on the qualified exempt purchases. Marathon also claims that the Department did not offer any solution for credit card transactions for otherwise tax exempt sales which had sales tax embedded in the price at the point of purchase and acknowledged those types of transactions are complicated in General Information Letter ST-09-0095-GIL. According to Marathon, it was left to its own devices in structuring its steps in the overall gas purchase transactions to achieve the appropriate result of not charging, collecting or

remitting sales tax on exempt sales of gasoline. Marathon argues that the only thing left to complete the loop of having every taxpayer involved in the Marathon gas purchases finish up where they should be vis-à-vis Illinois sales tax is for the Department to recognize and pay Marathon's claim.

3. The Deposition at Issue

The above summary of facts is meant as an overview as a backdrop for the question before the Court as to whether the Petitioner is entitled to depose a Department witness on its taxpayers' accounts credit procedures. It is not meant to preclude any party from framing the facts and any legal argument as it seems fit in future pleadings in this case.

In arguing that the Department witness' testimony would be relevant to the issues in this matter, Marathon claims it needs "information regarding the ability of the Department to credit overpayments." Pet. Motion at 3. That, of course, presupposes that the payments made by Marathon to its dealers are "overpayments" for purposes of 20 ILCS 2505/2505-275 (Tax Overpayments). That is the position advanced by the Petitioner, rejected by the Department, and left undecided for another day by the Tribunal.

Regardless of whether the Petitioner's argument has merit or not, the testimony of a Department witness as to how the Department's overpayment procedure have been applied for cases in the past, how the procedures are applied for cases currently, or how those procedures will be applied in this case, if appropriate, or other cases in the future is entirely irrelevant to the issues in this case. If the Petitioner prevails in this case, whether or not the label "overpayment" is applied to its payments to the independent Marathon dealers, the Tribunal will direct the Department to honor Marathon's claim in this case. The internal mechanics of any payment process in the Department do not need to be known in order for the Tribunal to resolve the issues in this case and for the Department to abide by the Tribunal's order if the Tribunal finds for Marathon. Furthermore, any legal arguments to be made by either side as to the interpretation, application, and relevancy of 20 ILCS 2505/2505-275 in this case will be made by counsel for both sides as issues of law to the Tribunal as opposed to coming from a lay witness.

4. Conclusion

This court finds that the testimony of a Department witness on its overpayment credit process is irrelevant in this case. Accordingly, the Department's Motion to Quash Taking of Deposition dated February 5, 2016 is granted.

s/ *James Conway*
JAMES M.CONWAY
Chief Administrative
Law Judge

Date: March 2, 2016