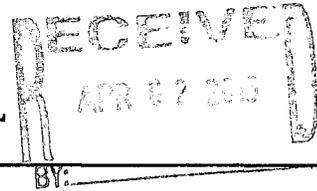


IN THE ILLINOIS
INDEPENDENT TAX TRIBUNAL



MARATHON PETROLEUM COMPANY LP)
Petitioner,)
v.) No. 14 TT 88
ILLINOIS DEPARTMENT OF) Chief Judge James Conway
REVENUE,)
Respondent.)

PETITIONER'S MOTION TO COMPEL DISCOVERY RESPONSES

Petitioner, Marathon Petroleum Company LP ("MPC"), pursuant to Illinois Supreme Court Rule 201, moves to compel the Respondent, the Illinois Department of Revenue (the "Department" or "IDOR"), to provide full disclosure responsive to the First Written Interrogatories ("Interrogatories") and First Set of Requests to Produce ("Requests to Produce") served upon the Department on September 2, 2014.

In support of its Motion, the Petitioner states as follows:

I. Course of Discovery

MPC diligently served Interrogatories and Requests to Produce on the IDOR on September 2, 2014, in a reasonable total of 12 Interrogatories and 5 Requests to Produce.

Failing to obtain timely responses, and after consultations by telephone with counsel for the IDOR, MPC sent a letter to the

IDOR's counsel pursuant to S. Ct. Rule 201(k) inquiring about an estimate of additional time the IDOR might require to comply with said discovery. Twice thereafter, in December of 2014 and in January of 2015, the Department represented to this Tribunal that it had finished its responses but was awaiting review and signature by the Audit Bureau, pursuant to its internal protocol. This Tribunal in January of 2015 ordered the Department to provide such responses and objections as it could.

On February 9, 2015, the Department finally provided objections to 10 of 12 Interrogatories and 1 of 5 Requests to Produce. The Department's responses are attached as Exhibit A.

Given the legal nature of the Department's objections, it is obvious that the "required" Audit Bureau review and signature was unnecessary in September 2014 as it was in February 2015. The Department's counsel had no good faith basis to delay six months in filing the objections on the pretense of internal protocols involving non-legal personnel.

Under the Illinois Supreme Court Rules, "the objectives of discovery are to enhance the truth-seeking process, making good-faith compliance with discovery rules both desirable and necessary." *King v. American Food Equip. Corp.*, 160 Ill. App. 3d 898, 910 (1st Dist. 1987), citing *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 282 (1982). The Rules were

"enacted in order to enable attorneys to effectively prepare, evaluate, and present their cases (Citation omitted)." *Leeson v. State Farm Mutual Automobile Ins. Co.*, 190 Ill. App. 3d 359, 365 (1st Dist. 1989). The Department's unjustified delay in filing its objections, and the nature of certain of its relevance objections, evidence a general disregard for the discovery rules.

II. Relevance Objections

There are two lines of inquiry in the Interrogatories that were met by objections on the ground of relevance.

A. Information Accessible to the Department.

One field of inquiry, pursued through Interrogatory No. 2, is to identify whether certain information about taxpayers under the Retailers' Occupation Tax Act ("Sales Tax") [35 ILCS 120/1 et seq.] is available for access by the Department. Interrogatory No. 2 is restated in **Exhibit A** to this Motion.

The Department Objected to Interrogatory No. 2 stating that "it seeks information irrelevant to the issue in this matter" and then it framed the issue as "i.e. whether a retailer can offset its sales tax liability on retail sales with purported credits from its voluntary overpayments of another retailer's sales tax liability on unrelated transactions." IDOR Objection

to Interrogatory No. 2. That objection is nothing more than misdirection.

The Department filed an answer to the Petition rather than move to dismiss, hence the claim stated by the petition is the touchstone for relevance. The Interrogatory seeks information relevant to the claim raised by MPC's Petition. The IDOR Auditor stated in his audit notes stated that MPC "bore the burden" of the tax on exempt sales made by its dealers to exempt purchasers, because MPC paid the tax on such sales to the dealers to be remitted to the Department. The assessment against MPC is for that same amount paid by MPC on exempt sales by its dealers, *i.e.*, the Department seeks a double payment by MPC of the same tax amount. The claim in the Petition is that the Department, armed with the knowledge that MPC bore the burden of the tax, cannot ignore the State policy against unjust enrichment and simply refuse to look at available and accessible information in its own files that will confirm unjust enrichment would result if it made the assessment against MPC. What information was available and accessible to the Department before it made the assessment is relevant to the claim by MPC. The claim raises Issue A: whether the Department should have made an assessment at all. The objection raises Issue B: whether the assessment, once made, is defensible. MPC's case is

about Issue A, and the information requested is relevant to Issue A. The Department's objection is that the information is not relevant to Issue B. That objection is ineffective to bar discovery of information relevant to Issue A. The objection on the basis of relevance should be overruled and the Department should be compelled to answer the Interrogatory.

B. Information about Department protocols or procedures for administering 20 ILCS 2505/2505-275.

The Department made essentially an identical objection to Interrogatories Nos. 2, 4, 5, 6, 7 and 8. The line of inquiry pursued by these Interrogatories is to uncover what mechanisms the Department has in place, and how and by whom they are operated, to implement 20 ILCS 2505/2505-275 and thus avoid unjust enrichment, which would result from collection of the assessment against MPC.

Section 2505-275 of the Civil Administrative Code (the "CAC") provides:

Sec. 2505-275. Tax overpayments. In the case of overpayment of any tax liability arising from an Act administered by the Department, the Department may credit the amount of the overpayment and any interest thereon against any final tax liability arising under that or any other Act administered by the Department. The Department may enter into agreements with the Secretary of the Treasury of the United States (or his or her delegate) to offset all or part of an overpayment of such a tax liability against any liability arising from a tax imposed under Title 26 of the United States Code. The Department may collect a

fee from the Secretary of the Treasury of the United States (or his or her delegate) to cover the full cost of offsets taken, to the extent allowed by federal law, or, if not allowed by federal law, from the taxpayer by offset of the overpayment.

There is no Department regulation implementing Section 2505-275 of the CAC. The first sentence of the provision makes it self-evident that there is no language limiting its application only to instances where the same taxpayer has both the offsetting overpayment and liability. MPC's claim is that the Department had the statutory authority to apply an overpayment made by Marathon-branded dealers to the Department - the tax they remitted on exempt sales - to the liability that the Department proposed to assess against MPC. That liability would arise from disallowing MPC a credit against its own taxes in the amount of its payment to MPC dealers as tax on their exempt sales - a payment which the Department's auditor already concluded showed MPC "bore the burden of the tax."

The Department's objection to these Interrogatories was to first restate the view of relevance dealt with above in this motion, and MPC relies on that section as its basis to overcome that objection. The Department's second basis was that:

" . . . Further, the request will not lead to relevant evidence because Petitioner has not demonstrated that it has overpaid any of its own tax liability, as opposed to the liability of a third-party taxpayer, so the cited statutory provision is not implicated." Department Objections 4, 5, 6, 7 and 8.

However, contrary to what the objection asserts MPC must demonstrate, nothing in the text of Section 2505-275 of the CAC suggests that it is limited to an overpayment and offsetting liability by the same taxpayer. In fact, that Section 2505-275 of the CAC allows credits to offset liabilities across tax-types, e.g., income tax to sales tax, or vice versa, suggests otherwise since different taxpayer identifications are issued to the same taxpayer for different taxes administered by the Department, essentially rendering the same entity a "different" taxpayer for each tax. There is simply no statutory basis for the Department's objection.

What we do know is that the Department auditor found that MPC "bore the burden" of paying a tax on sales to an exempt purchaser and that the retailer was to remit taxes to the Department on an exempt purchase. We know the Department was overpaid Sales Tax on exempt sales, and that Section 2505-275 of the CAC allows the Department to "credit the amount of the overpayment . . . against any final tax liability arising under that or any other Act administered by the Department." 35 ILCS 2505/2505-275 (emphasis added). The Department has not bothered to promulgate a regulation adopting the view its objection asserts. Hence, it is highly relevant to MPC's claim:

- i. Whether there is any other written Department material regarding the use of the power conferred by Section 2505-275 of the CAC (Interrogatory No. 4);
- ii. Whether there is any legal authority regarding the Department's actions under Section 2505-275 of the CAC (Interrogatory No. 5);
- iii. Identifying the area(s) of the Department responsible for taking action under Section 2505-27 of the CAC (Interrogatory No. 6);
- iv. Identifying the person(s) responsible for implementing such actions under Section 2505-275 of the CAC (Interrogatory No. 7); and
- v. Identifying the person(s) authorized to order actions to be taken under Section 2505-275 of the CAC (Interrogatory No. 8).

The information MPC seeks is relevant to determine if the Department erected internal barriers to using the full authority the statutory text conveys and thus, deprived MPC of a potential avenue of relief. The information is relevant to determine if the Department actually has the ability, technologically or through manual intervention, to implement the relief MPC is entitled to obtain under the plain language of the statute, regardless of what its narrow litigation posture may be regarding that authority and ability. The information is relevant to determine whether the Department is aware of its capability to implement the relief that MPC is entitled to obtain and whether some individual(s) denied MPC such relief and whether they did so capriciously, arbitrarily or otherwise without legal justification. MPC is entitled to discover

whether the Department has unlawfully restricted the application of Section 2505/275 of the CAC, and whether there are any insurmountable obstacles, *i.e.* beyond Department intransigence, to implementing the relief to which MPC is entitled to under Section 2505/275 of the CAC. In sum, the information is relevant to determine if the Department is purposefully turning a blind eye to a known unjust enrichment. The objection on the basis of relevance should be overruled and the Department should be compelled to answer the Interrogatories.

III. Insufficient Responses

Two MPC Interrogatories attempted to discover the basis for the Department's answer to a specific allegation in the Petition.

A. Interrogatory No. 1.

Interrogatory No. 1 asked the Department to "State with specificity the facts that you believe support the denial set forth in the Answer to allegation number 21 of the Petition."

The Department's Response was that the allegations in paragraph 21 "were denied because they contained legal conclusions."

Paragraph no. 21 of the Petition states the following:

21. The Department's audit staff and management received access to MPC's books and records supporting the tax exempt transactions by MPC dealers, as reported to Heartland and reimbursed by MPC, to allow the Department to confirm that MPC paid the tax due on sales by Marathon-branded dealers to exempt purchasers.

The Department's auditor concluded: "So at this point the taxpayer has bore the burden of the tax when they sent it to the dealers to remit on their sales tax returns." See Exhibit B to this Motion, "EDA 8R-Audit Questionnaire" and attached "Auditor's Narrative", pg. 4, by Allan Schell, Revenue Auditor III, 3/12/2014. The Department's response to the Interrogatory is at odds with their auditor's own conclusion. The answer is insufficient to explain why the Department denied allegation No. 21, and the reason why the Department denied something that their Auditor expressly confirmed is relevant to MPC's claim.

B. Interrogatory No. 3.

Interrogatory No. 3 asked the Department to "State with specificity the facts that you believe support the denial set forth in the Answer to allegation number 30 of the Petition."

The Department's Response was: "Allegation number 30 of the Petition was denied because in order to admit the statement, every Illinois Marathon Branded dealer would have to be audited. In addition, documentation would have to be provided on every

Marathon Branded dealer that was audited to prove that all tax was remitted."

Paragraph No. 30 of the Petition states the following:

30. The State Treasury received, and the Department has not refunded, the amount of tax paid by Marathon-branded dealers in Illinois for the MPC audit periods that is at least equivalent to the amounts paid to the Marathon-branded dealers by MPC in respect of exempt purchasers' purchases during the audit periods.

The Department's response is manufacturing an unnecessary burden to avoid discovery. The Department knows the identity and sales tax registration numbers of all Marathon-branded dealers because it received and reviewed all the resale certificates tendered to MPC by Marathon-branded dealers. The Department also received the itemization of the amounts paid by MPC to its dealers on tax exempt sales. Although the Department objected to Interrogatory No. 2 regarding the information to which it has access, on information and belief the Department has a computerized account history of its filings, payments, credits, and audit history for every Sales Tax taxpayer.

Therefore, without conducting individual audits of every Marathon-branded dealer, the Department can verify whether the assessment against MPC for any given period would result in unjust enrichment. For instance:

(a) If the amount of tax remitted by a Marathon-branded dealer for a tax period was less than the amount paid by MPC to the dealer for exempt sales during that tax period there would be no unjust enrichment in assessing MPC for that tax period as that would indicate, notionally, that less than all of MPC's payment to the dealer reached the State treasury; or,

(b) If the amount of a refund paid to a dealer for that period exceeded the amount MPC paid to the dealer for exempt sales during that tax period there would be no unjust enrichment in assessing MPC for that tax period as that too would indicate, notionally, that the amount paid by MPC and remitted by the dealer was disgorged from the State Treasury; or,

(c) If the Department wanted to examine actual dealer returns, to which it also has access, it could look to the amount of exempt sales deducted on Line 13 of Schedule A to an ST-1 return and compare it to the amount paid by MPC to the dealer for that ST-1 period to determine if the dealer took a deduction instead of remitting the payment it received from MPC for that return period. To the extent of that deduction there would be no unjust enrichment in assessing MPC for that tax period as that too would

indicate, notionally, that the amount paid by MPC to the dealer for its exempt sales did not, notionally, reach the State Treasury.

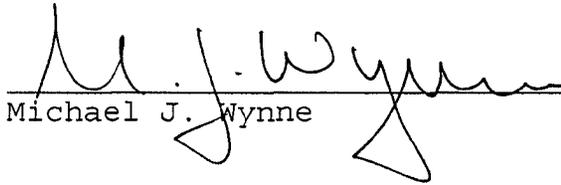
An answer to allegation Number 30 should be provided, either through amendment or through discovery, as it is entirely unnecessary to conduct audits of any Marathon-branded dealers and MPC has not requested documentation about any specific Marathon-branded dealers.

IV. Conclusion

The Department's relevance objections to MPC's Interrogatories are ill-founded and do not represent a good faith participation in the truth-seeking process of discovery. Therefore, MPC is entitled to an order from this Tribunal that compels the Department to respond to Interrogatories Numbers 2, 4, 5, 6, 7 and 8.

The Department's insufficient responses to Interrogatories Numbers 1 and 3 are contrary to their own Auditor's determination and manufacture unnecessary complexity as a pretext to avoid the truth-seeking process of discovery. Therefore, MPC is entitled to revised responses to Interrogatories Numbers 1 and 3.

Respectfully submitted,
Marathon Petroleum Company LP

By: 
Michael J. Wynne

Michael Wynne
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REED SMITH LLP
10 South Wacker Drive
Chicago, IL 60606
(312) 207-3894

EXHIBIT A

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

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

**ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE TO
PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT**

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 First Set of Interrogatories to Respondent as follows:

GENERAL OBJECTIONS

These General Objections are made in addition to the Specific Objections and no full or partial answer of a Request is intended to waive either these General Objections or any Specific Objection to Request. The Department incorporates the following General Objections into their Responses and Specific Objections below:

- (a) The Department objects to the extent Petitioner's First Set of Interrogatories seeks disclosure of information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or doctrine.
- (b) The Department objects to the extent Petitioner's First Set of Interrogatories purport to impose obligations beyond those imposed by the Illinois Supreme Court Rules, Rules of the Illinois Independent Tax Tribunal, 86 Ill. Adm. Code § 5000.10, *et. seq.*, or any rules or orders of this Court.

(c) The Department objects to the extent Petitioner's First Set of Interrogatories seek or call for a legal conclusion rather than the admission of a fact.

ANSWERS TO INTERROGATORIES

INTERROGATORY 1: State with specificity the facts that you believe support the denial set forth in the Answer to allegation number 21 of the Petition.

RESPONSE: The allegations in paragraph 21 were denied because they contained a legal conclusion.

INTERROGATORY 2: From the date of the commencement of the audit which concluded in the issuance of the notices of tax liability that are the subject of the Petition to the date of the Department's response to these Interrogatories state whether the Department had access to each of the following, with respect to a retailer in Illinois registered under the Illinois Retailers' Occupation Tax Act to whom Marathon made sales for resale of gasoline during any or all of the audit period covered by said notices:

- a. The retailer's registration number;
- b. The tax returns filed by the retailer;
- c. The tax return information provided by the retailer;
- d. The records of a Department audit of the retailer;
- e. The retailer's tax payment and collection history; and
- f. Record of any claim for credit or refund filed by the retailer for said period, and its status and disposition.

OBJECTION: The Defendants object to this interrogatory as outside the scope of discovery in that it seeks information irrelevant to the issue in this matter, i.e., whether a retailer can offset its sales tax liability on retail sales with purported credits from its voluntary overpayments of another retailer's sales tax liability on unrelated transactions. Further, the request will not lead to any relevant evidence because Petitioner has not demonstrated that it has overpaid any of its own tax liability, as opposed to the liability of a third party taxpayer, so the cited statutory provision is not implicated.

RESPONSE: For the reasons stated in the objection above, the Department declines to answer.

INTERROGATORY 3: State with specificity the facts that you believe support the denial set forth in the Answer to allegation number 30 of the Petition.

RESPONSE: Allegation number 30 of the Petition was denied because in order to admit the statement, every Illinois Marathon Branded dealer would have to be audited. In addition, documentation would have to be provided on every Marathon Branded dealer that was audited to prove that all the tax was remitted.

INTERROGATORY 4: With regard to 20 ILCS 2505/2505-275, identify with specificity each record or document, including, without limitation, a regulation, informational bulletin, technical advice memorandum, intra-departmental memorandum, instruction, procedure, letter, electronic mail, or other record, whether maintained or accessed in physical format or electronically, concerning Department action pursuant to 20 ILCS 2505/2505-275.

OBJECTION: The Defendants object to this interrogatory as outside the scope of discovery in that it seeks information irrelevant to the issue in this matter, i.e., whether a retailer can offset its sales tax liability on retail sales with purported credits from its voluntary overpayments of another retailer's sales tax liability on unrelated transactions. Further, the request will not lead to any relevant evidence because Petitioner has not demonstrated that it has overpaid any of its own tax liability, as opposed to the liability of a third party taxpayer, so the cited statutory provision is not implicated.

RESPONSE: For the reasons stated in the objection above, the Department declines to answer.

INTERROGATORY 5: Unless the full legal citation for such authority is included in the materials identified in response to Interrogatory No. 4, identify with specificity any statute, regulation, judicial precedent, or other legal authority that regards action by the Department pursuant to 20 ILCS 2505/2505-275.

OBJECTION: The Defendants object to this interrogatory as outside the scope of discovery in that it seeks information irrelevant to the issue in this matter, i.e., whether a retailer can offset its sales tax liability on retail sales with purported credits from its voluntary overpayments of another retailer's sales tax liability on unrelated transactions. Further, the request will not lead to any relevant evidence because Petitioner has not demonstrated that it has overpaid any of its own tax liability, as opposed to the liability of a third party taxpayer, so the cited statutory provision is not implicated.

RESPONSE: For the reasons stated in the objection above, the Department declines to answer.

INTERROGATORY 6: Identify with specificity each program area, bureau, division, office of other organizational unit within the Department responsible for executing actions of the Department pursuant to ILCS 2505/2505-275 with respect to sales (occupation), use and excise taxes administered by the Department.

OBJECTION: The Defendants object to this interrogatory as outside the scope of discovery in that it seeks information irrelevant to the issue in this matter, i.e., whether a retailer can offset its sales tax liability on retail sales with purported credits from its voluntary overpayments of another retailer's sales tax liability on unrelated transactions. Further, the request will not lead to any relevant evidence because Petitioner has not

demonstrated that it has overpaid any of its own tax liability, as opposed to the liability of a third party taxpayer, so the cited statutory provision is not implicated.

RESPONSE: For the reasons stated in the objection above, the Department declines to answer.

INTERROGATORY 7: For any unit of the Department identified in response to Interrogatory No. 6, identify, by name, title, and the location where they are primarily employed by the Department, each person within such unit that is responsible for implementation of Department action pursuant to 20 ILCS 2505/2505-275.

OBJECTION: The Defendants object to this interrogatory as outside the scope of discovery in that it seeks information irrelevant to the issue in this matter, i.e., whether a retailer can offset its sales tax liability on retail sales with purported credits from its voluntary overpayments of another retailer's sales tax liability on unrelated transactions. Further, the request will not lead to any relevant evidence because Petitioner has not demonstrated that it has overpaid any of its own tax liability, as opposed to the liability of a third party taxpayer, so the cited statutory provision is not implicated.

RESPONSE: For the reasons stated in the objection above, the Department declines to answer.

INTERROGATORY 8: Identify, by name, title and the location where they are primarily employed by the Department, any person, or persons if there is more than one, with authority to order Department action pursuant to 20 ILCS 2505/2505-275.

OBJECTION: The Defendants object to this interrogatory as outside the scope of discovery in that it seeks information irrelevant to the issue in this matter, i.e., whether a retailer can offset its sales tax liability on retail sales with purported credits from its voluntary overpayments of another retailer's sales tax liability on unrelated transactions. Further, the request will not lead to any relevant evidence because Petitioner has not demonstrated that it has overpaid any of its own tax liability, as opposed to the liability of a third party taxpayer, so the cited statutory provision is not implicated.

RESPONSE: For the reasons stated in the objection above, the Department declines to answer.

INTERROGATORY 9: Disclose the name and title of any person, or persons employed by the Department, who, prior to the date of the response to these Interrogatories, requested of any person identified in Interrogatory No. 8 that the Department take action pursuant to 20 ILCS 2505/2505-275 with respect to the amount which Allan Schell, Revenue Auditor III, concluded the Taxpayer "bore the burden of the tax" in page 2 of the Auditor's Narrative dated March 12, 2014, and the amount of liability which the same narrative describes as "disallowed use of franchise exempt sales of \$572,392.00."

RESPONSE: The answer to this interrogatory is contained in the Department's audit file, specifically the document titled "Auditor's Narrative," page, 2, a copy of which was previously provided to counsel for the Petitioner.

INTERROGATORY 10: Disclose the name and title of each person, or persons, employed by the Department, who, prior to the date of the response to these Interrogatories, with respect to the amount which Allan Schell, Revenue Auditor III, concluded that the Taxpayer "bore the burden of the tax" in page 2 of the Auditor's Narrative dated March 12, 2014, and the amount of liability which the same narrative describes as "disallowed use of franchise exempt sales of \$572,392.00", requested authorization to offset the two amounts.

RESPONSE: The answer to this interrogatory is contained in the Department's audit file, specifically the document titled "Auditor's Narrative," page, 2, a copy of which was previously provided to counsel for the Petitioner.

INTERROGATORY 11: With respect to each request made by a person disclosed in response to Interrogatories No. 9 and No. 10, disclose the name and title of each person, or persons, to whom the request was made.

OBJECTION: The Defendants object to this interrogatory as ambiguous and unclear. It is not clear what "request" the interrogatory is referring to. The persons disclosed on page 2 of the Auditor's Narrative" did not make any request. They were supervisors of the Department's auditor.

RESPONSE: For the reasons stated in the objection above, the Department cannot answer.

INTERROGATORY 12: Identify by name, title, employer and business address any and all individuals that assisted or were consulted in the preparation of any response to these Interrogatories.

RESPONSE: (a) Allan Schell, Revenue Auditor III; (b) Roger Koss, Sales and Miscellaneous Taxes Division Manager; and (c) Angela Freitag, Revenue Audit Supervisor; (d) Michael Coveny, Special Assistant Attorney General.

Dated: February 4, 2015

Respectfully submitted,



Michael Coveny
Special Assistant Attorney General

Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL. 60601
(312) 814-6697; FAX (312) 814-4344

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 First Set of Written Interrogatories upon:

Michael J. Wynne
Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606
mwynne@reedsmith.com

Adam Beckerink
Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606
abeckerink@reedsmith.com

By email to the email addresses listed above on February 9, 2015.

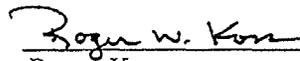


Michael Coveny

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS

VERIFICATION

I, Roger Koss, being first duly sworn upon his oath, deposes and says that I am an employee of the Illinois Department of Revenue and as such I am the duly authorized agent for the Illinois Department of Revenue, that I have read the foregoing Department of Revenue's Response to Petitioner's First Set of Written Interrogatories, that I am well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, I certify that the matters and things contained in it are true to the best of my knowledge, information and belief.



Roger Koss
Sales and Miscellaneous Taxes Division Manager
ILLINOIS DEPARTMENT OF REVENUE

Dated: February _____, 2015

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

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

**ILLINOIS DEPARTMENT OF REVENUE’S RESPONSE TO
PETITIONER’S FIRST SET OF REQUESTS FOR PRODUCTION**

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 First Set of Document Requests to Respondent as follows:

GENERAL OBJECTIONS

These General Objections are made in addition to the Specific Objections and no full or partial answer of a Request is intended to waive either these General Objections or any Specific Objection to Request. The Department incorporates the following General Objections into their Responses and Specific Objections below:

- (a) The Department objects to the extent Petitioner’s First Set of Document requests seeks disclosure of information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or doctrine.
- (b) The Department objects to the extent Petitioner’s First Set of Document requests purport to impose obligations beyond those imposed by the Illinois Supreme Court Rules, Rules of the Illinois Independent Tax Tribunal, 86 Ill.Adm.Code § 5000.10, *et. seq.*, or any rules or orders of this Court.

(c) The Department objects to the extent Petitioner's First Set of Document requests seek or call for a legal conclusion rather than the admission of a fact.

ANSWERS TO DOCUMENT REQUEST

REQUEST 1: Produce copies of any and all records or documents identified in response to Interrogatory No. 4.

RESPONSE: None identified.

REQUEST 2: Produce copies of any and all records or documents identified in response to Interrogatory No. 5.

RESPONSE: None identified.

REQUEST 3: Produce copies of any and all records or documents related to a request disclosed in response to Interrogatory No. 11.

RESPONSE: None identified.

REQUEST 4: Produce copies of all records or documents, including without limitation the Audit Manual Technical Support Memoranda, etc., which relate to the offset of overpayments and liabilities in a Department audit.

OBJECTION: The Defendants object to this document request as outside the scope of discovery in that it seeks information irrelevant to the issue in this matter, i.e., whether a retailer can offset its sales tax liability on retail sales with purported credits from its voluntary overpayments of another retailer's sales tax liability on unrelated transactions. Further, the request will not lead to any relevant evidence because Petitioner has not demonstrated that it has overpaid any of its own tax liability, as opposed to the liability of a third party taxpayer, so materials on the overpayment of a liability are not relevant. The Department further objects because its audit manual and other internal documents are protected from disclosure under the Illinois Freedom of Information Act, 5 ILCS 140/7(z).

RESPONSE: For the reasons stated in the objection above, the Department cannot produce any documents.

REQUEST 5: Produce copies of any and all records or documents used or reviewed in responding to Petitioner's First Set of Written Interrogatories.

RESPONSE: Any and documents response to this request are contained in the Department's audit file, a copy of which was previously provided to counsel for Petitioner.

Respectfully submitted,



Michael Coveny
Special Assistant Attorney General

Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL. 60601
(312) 814-6697; FAX (312) 814-4344

Dated: February 4, 2015

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 First Set of Written Interrogatories upon:

Michael J. Wynne
Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606
mwynne@reedsmith.com

Adam Beckerink
Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606
abeckerink@reedsmith.com

By email to the email addresses listed above on February 9, 2015.



Michael Coveny

EXHIBIT B

Illinois Department of Revenue

EDA-8R Audit Questionnaire

Write N/A for questions that are not applicable. Provide comments where requested.

A. General

- 1 Taxpayer name MARATHON PETROLEUM COMPANY LP
2 DBA MARATHON PETROLEUM COMPANY LP
3 Address 539 S.MAIN ST. RM.4130
...FINDLAY, OH. 45840-3229
4 Telephone no. (419)421-2121
5 Fax no.
6 Contact person NEIL STELSCHULTE
7 Audit period 01/01/2009 - 06/30/2011
8 Statute expiration date 06/30/2014
9 Is Form NUC-10 or NUC-1 needed to update this account?
[X] yes [] no
10 Registration no. 2877-6585
11 FEIN 31-1537655
12 Track no. A362241024
13 Applicable taxes
[X] ROT [] SOT [] Mass transit
[X] UT sales [] SUT [] Local
[X] UT purchases [] MPEA [] Soft drink
14 Type of ownership
[X] corporation [] sole proprietor
[] partnership [] other
15 Principal business activity
PETROLEUM

B. Retailers' Occupation Tax and Use Tax Sales

- 1 What accounting method was used as the basis for filing the returns?
2 Did you prepare a reconciliation?
3 How were deductions claimed?
4 Did the taxpayer claim any deduction more than once?
5 How did you verify deductions?
6 Did you verify the discounts claimed by the taxpayer?
7 Did you verify the tax collections and tax collection deductions?
1 ROT ACCRUAL FIT ACCRUAL
2 [X] yes [] no [] n/a
3 [X] on return [] elimination [] none taken
4 [] yes [X] no [] n/a
5 [X] detail [] sample [] CAA
[] n/a [] not examined
6 [X] yes [] no [] n/a
7 [X] yes [] no [] n/a

C. Local Taxes

- 1 Did the taxpayer change or add in-state locations during the audit?
2 Did the taxpayer have more than one in-state location during the audit?
3 Did the taxpayer report sales that were not subject to local taxes?
1 [] yes [X] no [] n/a
2 [X] yes [] no [] n/a
3 [X] yes [] no [] n/a

D. Use Tax Purchases

- 1 How did you examine capital asset additions?
2 How did you examine consumables?
3 Did you check inventory withdrawals?
1 [] detail [] sample [X] CAA
[] n/a
2 [] detail [] sample [X] CAA
[] n/a
3 [X] yes [] no [] n/a

E. Service Taxes

- 1 This taxpayer is
(Choose all that apply.)
2 How did the taxpayer pay SOT?
3 How did the taxpayer collect the tax?
1 [] a serviceman [] serviceman supplier
[] not a serviceman [X] a retailer
[] de minimis
[] at or above the 35%/75% threshold
2 [] to supplier [] through self-assessment
[] on full selling price [X] n/a
3 [] on material cost
[] on material sales price
[] other (explain in comments)
[X] n/a

Auditor's signature [Signature] Date 3-12-14

F. Compliance checks

Tax type	Check made	Registration no.	Open Periods	Action taken
1 ROT	[X] yes [] n/a	2877-6585	[] yes [X] no	_____
2 WIT	[X] yes [] n/a	31-1537655	[] yes [X] no	_____
3 BIT	[X] yes [] n/a	31-1537655	[] yes [X] no	_____
4a IIT	[X] yes [] n/a	25-1410539	[] yes [X] no	_____
4b IIT	[X] yes [] n/a	25-0996816	[] yes [X] no	_____
4c IIT	[X] yes [] n/a	27-1287018	[] yes [X] no	_____
4d IIT	[] yes [X] n/a	_____	[] yes [X] no	_____

5a Is the taxpayer subject to any other tax(es) administered by the Department of Revenue? [] yes [X] no

5b If yes, is the taxpayer in compliance with the other tax(es)? [] yes [X] no

5c List taxes in compliance and registration/license number.

5d If the answer to 5b is no, attach a copy of the audit referral to this document.

G. Miscellaneous

1 If the taxpayer is not in agreement with the audit findings, were all options and protest rights (including the availability of the Informal Conference Unit) fully explained, and was the taxpayer given a copy of the "Informal Conference Unit" pamphlet? 1 [X] yes [] no [] n/a

2 If this audit is unagreed or agreed without payment, did you complete Form EDA-8-A, Collection/Legal Action Support? 2 [X] yes [] no [] n/a
If 'no,' why didn't you complete the form?

3 Were any assessments resolved and collected in this audit? 3 [] yes [X] no
If 'yes,' list each amount and assessment number.

4 Should any assessments be cancelled as a result of this audit? 4 [] yes [X] no
If 'yes,' list each amount, assessment number, and the reason for the cancellation.

5 Do you anticipate the taxpayer filing a claim as a result of this audit or auditor recommendation? 5 [] yes [X] no
If 'yes,' what is the estimated amount to be claimed and the reason for the claim? Amount \$ _____

**AUDITOR'S NARRATIVE
MARATHON PETROLEUM COMPANY LP
AUDIT PERIOD: 01/01/2009 TO 06/30/2011
REGISTRATION NUMBER: 2877-6585
TRACK NUMBER: A362241024**

BACKGROUND AND HISTORY OF TAXPAYER

Marathon Ashland Petroleum LLC (taxpayer) is one of the largest oil companies in the U.S., operating primarily in the Midwest. Though based in Houston Texas, corporate headquarters is located in Findlay Ohio. Illinois operations include both a refinery and fueling terminals. The terminals are basically tank farms storing various grades and types of refined fuels from which trucks are loaded in making deliveries to area customers.

AUDIT PERIOD

The audit period is from January 1, 2009 through June 30, 2011. The Statute of Limitations runs through June 30, 2012. Statute of Limitations waivers were obtained extending the statute to June 30, 2014.

MULTIPLE LOCATIONS

Taxpayer does maintain several locations within the state of Illinois. They operate a refinery, eight terminal (tank farms or marketing division) and five asphalt plants.

PAYMENT VERIFICATION

ACCELERATED PAYMENTS

Taxpayer is required to make accelerated payments.

SALES TAX RETURNS

The transcript of returns included with the audit package, were compared with the taxpayer copies of the ST-1's and checked for errors. No differences were found. Verification of payments and timeliness of filing was performed via department records.

ST-16 and ST-17

The taxpayer takes advantage of the Manufacturer Purchase Credits. The taxpayer presented me with copies of the returns for 2009, 2010 and 2011. Verification that the returns were received from the department was requested through Jason Dasher. The copies of the departments returns were received and they were received prior to the due date.

PREPAID SALES TAX ON MOTOR FUEL

A tax paid by retailers to distributors at an amount of three cents per gallon. The taxpayer being a distributor is required to collect and remit the five or six cents per gallon that it sells to retailers. Verification of payments and timeliness of filing was performed via department

records. Copies of the returns were provided by the taxpayer and are being submitted with the audit.

BUSINESS INCOME TAX RETURNS

The taxpayer is also registered for BIT. The taxpayer has a calendar year end of December 31 and files form 1065 (Federal) and IL-1065 (Illinois). Compliance was verified via Gentax for the periods ending December 31, 2009 and 2010. Hardcopies were provided by the taxpayer and are included in the audit folder.

Personal Income Tax for Individuals and Trusts

There were two partners in 2009 and three partners in 2010. The 2009 return shows a loss and the one shareholder does not maintain a BIT account. Since the 2009 shows a loss a referral was submitted. The 2010 return has two minor partners who file as part of the major partners unitary return.

WITHHOLDING INCOME TAX

The taxpayer is also registered for WIT. All records and payments have been filed and paid to the department in a timely manner. Verification of payments and timeliness of filing was performed via department records; information was printed for hard copies.

SALES RECONCILIATION

SCHEDULE 3

A sales reconciliation was prepared by using the summary of transactions by state and recording those totals under B&R's.

SCHEDULE 5

Schedule 5 was prepared to verify sales tax collections. This was accomplished by reconciling the tax collected per the books and records to that reported on the ST-1 returns. The sales tax collected and the sales tax remitted shows a balance due of \$571,392.00.

Exempt Credit Card Sales

All Marathon Gas Stations are independently owned (there are no corporate owned stations) and the taxpayer has various types of credit cards issued through the corporation. When an exempt organization purchases gas at the pump sales tax is paid since the tax is built into the price at the pump. The dealers transmit their daily credit card activity to Heartland Payment Systems. The credit card companies then run the sales reports against their tax exempt customer list. They then pay the taxpayer for the sales transaction minus the sales tax and processing fees. The taxpayer, for some reason, pays the dealers the full amount of the sales transactions plus sales tax but minus a processing fee. The exempt agencies are billed by the banks for the sales minus the sales tax. So the exempt agencies are bill correctly and the dealers have reported the sales as taxable and paid the tax on the exempt sales. So at this point the taxpayer has bore the burden of the tax when they sent it to the dealers to remit on their sales tax returns. So to recover the sales tax they are offsetting the sales tax from their bulk sales against the exempt credit card sales. The process has been disallowed since the dealers are the one remitting the tax they are the ones that need to claim the credits. This was discussed with Charles Frederick and James Irwin who

were in agreement with the decision after their review. The other issue is that the exempt sales take place throughout the state yet they are offset the tax paid to only the terminal locations, eight of them, where the bulk transactions take place. So an exempt Chicago sale is being used to offset a bulk sale in Rockford.

INTERNAL CONTROL

The internal controls of the taxpayer were reviewed and found to be adequate.

SALES EXAMINATION

The taxpayer provided me with a detailed list of its customers. The customers were alphabetically sorted and every fourth customer's certificate was pulled for review. The taxpayer had all of the certificate on file and all were in proper order. There is no tax liability established in this portion of the audit.

PURCHASES EXAMINATION

CONSUMABLE GOODS AND FIXED ASSETS

The consumable supplies and fixed assets were examined using CAA. The taxpayer is a Direct pay participant with the State of Illinois. The purchases are divided into two divisions, Marketing and Refinery. The Refinery Division consists of the refinery and the tank farm located at the refinery and the Marketing Division consists of the remaining tank farms and the asphalt plants. Each division's examination is set up into 5 strata's with each strata having their own taxable percentage. Listed below are the new percentage for the taxable, MPC earned and MPC allowed to be used.

Marketing:

<u>Strata</u>	<u>Taxable %</u>	<u>MPC Earned %</u>	<u>MPC Use %</u>
Strata 1	63.68%	0.00%	0.00%
Strata 2	55.42%	0.00%	0.00%
Strata 3	60.02%	0.00%	0.00%
Strata 4	23.70%	0.00%	0.00%
Strata 5	Detailed	Detailed	Detailed

Refinery:

<u>Strata</u>	<u>Taxable %</u>	<u>MPC Earned %</u>	<u>MPC Use %</u>
Strata 1	30.02%	39.76%	20.80%
Strata 2	24.70%	43.06%	14.59%
Strata 3	19.96%	41.58%	7.75%
Strata 4	15.86%	46.73%	8.94%
Strata 5	Detailed	Detailed	Detailed

The MPC Use Percentage for the refinery is the percentage based on the total sample size. Converted the percentage to a percentage of taxable purchases for audit calculations. So for

example Stata 1 was $(20.80\% \times 100)/30.02\%$ or 69.29%. This was done for all four strata's and worked into the workpapers.

The liability established for the marketing division totaled \$36,587.00. The liability established for the refinery division totaled \$59,175.00. There was one item in the refinery division detailed exam that was assessed in the audit in the amount of \$1,750.00. The total liability established for both divisions is \$97,512.00.

MPC:

Of the liability established for the Refinery and Marketing divisions \$63,680.00 is being paid by MPC. The taxpayer also can exchange MPC for cash in the amount of \$87,930.00. See attachment 1 for the calculations. As the attachment shows, any month where the taxpayer over paid the month the additional MPC allowed to be used is converted to cash and if a liability still exists then it is being used to cover a portion of the liability. Per technical even though the 2009 MPC is out of statute excess from 2010 and 2011 can be used to cover 2009. So the amount allowed for 2009 minus what was used, the difference is being convert to cash.

SCHEDULES AND ATTACHMENTS

There were two schedules or attachments generated in this audit.

Attachment 1: this attachment was generated to calculate the amount of MPC for Cash exchange and the amount of MPC to be used in the audit.

Attachment 2: this attachment was generated to show how the prepayment was distributed during the audit period. There were two types of prepayment, cash and MPC. The cash was used to cover liability that could not be paid for with MPC. The MPC was more of a headache.

MPC prepayment could only be used to cover the liability eligible to be covered by MPC. Since only the Refinery side of the audit generates and uses MPC these are the areas MPC was applied. One issue was that the taxpayer is a direct pay participant and the tax is allocated to various municipalities which may have local tax implications. Based on a discussion with Mansoor Qureshi the amount of MPC used to cover the local portion of the tax is immaterial and to try and calculate the state portion of the tax due for each for each month too time consuming. So the MPC used were applied to only the Refinery liability established each month till it was used up. Attachment 2 show the amount of MPC used each month.

MISCELLANEOUS

CAA was contacted for this audit and the CAA audit was Vince Russell. This is a mandatory CAA audit and a direct pay audit.

MPC was an issue in this audit.

Great Lakes Questionnaire was not completed by the auditor, based on the information provided during the audit.

ASSESSMENTS/CREDITS or STATEMENT OF ACCOUNT

There is an open assessments on the taxpayer's account but was not created till October 2013 and on RUT-25, not part of the statement issued. The taxpayer does have a useable credit on the account. The Statement of Account was generated and presented to the taxpayer.

MAINTENANCE

The taxpayer was registered with the state, NUC-1 was not completed. There were several locations that either needed added or reactivated for the direct pay allocation. These locations were added or activated via the NUC-010.

OPEN WORK ITEM

No open work items existed on the account at the time of this write up.

AUDIT REFERRALS

There was no audit referral submitted with this audit.

CAF

There was a prior audit conducted on this taxpayer for the period 4/1/2006 to 12/31/2008. The CAF was provided via email. The CAF was reviewed prior to the audit appointment.

SC-137

This audit is not the result of a SC-137 (audit referral).

CONFLICT OF INTEREST

Your audit was conducted without a conflict of interest with the taxpayer or their representative.

AUDIT INTEREST

The interest was calculated to the date that the audit was presented to audit supervisor. Since the audit is un-agreed daily interest was not an issue.

STANDALONE RETURNS

Due to rounding issues and the MPC for Cash exchange stand-a-lone returns had to be generated, both EDA-105's and EDA-104's. Was instructed that the EDA-104's could not have negative penalty so it had to be removed from several returns.

LETTERS

EDA-70 – not utilized in this audit.

EDA-11-A – not utilized in this audit.

EDA-11-B – not utilized in this audit.

RR-83 – was not utilized in this audit.

The taxpayer was easy to work with and provided all requested documentation upon verbal requests.

RESULTS OF AUDIT

This audit resulted in a liability of \$881,170.00. The liability consists of disallowed use of franchise exempt sales of \$571,392.00, credit of ROT in the amount of \$1,399.00, direct pay tax due Marketing Division of \$13,928.00, direct pay tax due Refinery Division of \$80,911.00, detailed exam of \$1,750.00, Marketing and Refinery projected use tax of \$1,159.00, penalty of \$149,862.00 and interest of \$63,567.00. The taxpayer was in agreement with the tax due for the two divisions (Marketing and Refinery) but were not in agreement with the disallowed use of the franchise exempt sales. They petitioned to ICB, which ruled against them and the audit was delayed future when the taxpayer and the state tried to work out a settlement. Notified that the offer was not accepted and the taxpayer informed of such was instructed to submit the audit as un-agreed. Prepared the audit paperwork and remitted for review to Charles Frederick RAS at his residence in Cleveland Ohio.

 3-12-14
Allan Schell Revenue Auditor III Date