

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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WASTE MANAGEMENT OF	)	
ILLINOIS, INC.,	)	
Petitioner,	)	
	)	
v.	)	15 TT 130
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	
Respondent.	)	

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**ORDER ON SUMMARY JUDGMENT MOTIONS**

Petitioner, Waste Management of Illinois, Inc., is challenging 32 Notices of Tentative Denials of Claims issued by the Department for monthly tax periods between February, 2012 through September, 2014 that total approximately \$200,012. According to the notices, the Department denied the claims because it determined that Waste Management was liable for Motor Fuel Tax (MFT) on its use of compressed natural gas (CNG) as a fuel for its motor fleet and that Waste Management was not entitled to claim refunds for the periods and amounts above for MFT previously paid by Waste Management on its use of CNG.

In its summary judgment motion, Waste Management argues that 1) CNG does not fall under the definition of a taxable “motor fuel” under the Illinois Motor Fuel Tax Law Act (MFTL), 35 ILCS 505/1.1 *et seq.*, because CNG is a gas and “motor fuel” is defined to only include liquids; 2) the Department went beyond its authority in 2014 when it amended its motor fuel regulations, 86 Ill. Adm. Code 500.100 and 500.200, to provide motor fuel gallon-equivalency rates for gaseous substances, including CNG; 3) Illinois’ membership in the International Fuel Tax Agreement (IFTA) cannot, by itself, make CNG a taxable motor fuel; and 4) the

Department violated both the Administrative Procedures Act and the Illinois Constitution when it issued a regulation which stated that the use of CNG is subject to MFT as that regulation impermissibly broadened the scope of the MFTL statute.

In its summary judgment motion and response to Waste Management's summary judgment motion, the Department argues that 1) the MFTL statute is ambiguous and when the entire statute is reviewed, along with divining the legislative intent behind the statute, it is clear that CNG is a taxable motor fuel under that statute; 2) the MFTL statute must be harmonized with Illinois' Retail Occupation Tax Act whose regulations clearly define CNG as a taxable motor fuel; 3) CNG is taxable under the MFT regulations promulgated by the Department; and 4) it was permissible for the Department to issue regulations concerning the taxability of CNG and it did not violate the Administrative Procedures Act or the Illinois Constitution while doing so.

Count I of Waste Management's Petition alleges that CNG is not a taxable motor fuel under the MFTL. Count II alleges that the Department's actions in classifying CNG as a taxable motor fuel violated the Illinois Constitution. Count III alleges that in denying Waste Management's claims for refunds the Department violated the Illinois Administrative Procedures Act by creating an unauthorized regulation by treating CNG as a taxable motor fuel. Count IV of the Petition demands that it be awarded attorneys' fees for the Department's conduct alleged in Count III.

At the outset of this litigation before the Tax Tribunal, the Department moved to dismiss Count IV and argued that the Tax Tribunal is prohibited from awarding attorneys' fees under Section 1-55 of its own statute. Section 1-55 of the Illinois Independent Tax Tribunal Act (35 ILCS 1010/1-1 *et seq.*) provides:

The Tax Tribunal shall not assign any costs or attorney's fees incurred by one party against another party. Claims for expenses and attorney's fees under Section 10-55 of the Illinois Administrative Procedure Act shall first be made to the Department of Revenue. If the claimant is dissatisfied because of the Department's failure to make any award or because of the insufficiency of the award, the claimant may petition the Court of Claims for the amount deemed owed.

This court held the Department's motion to dismiss Count IV in abeyance, pending a final decision on Count III, the substantive count on which Count IV is

premised. During the oral argument on the parties' respective summary judgment motions, Waste Management voluntarily moved to dismiss Counts III and IV of its Petition. Those Counts are hereby dismissed. Therefore, this decision relates only to Counts I and II of the Petition.

As explained below, Waste Management's summary judgment motion is denied and the Department's summary judgment motion is granted.

## **1. Background**

### **Illinois Motor Fuel Tax**

Illinois imposes a tax on the privilege of operating motor vehicles upon its public highways. 35 ILCS 505/2. The tax is calculated based on the amount of motor fuel used in a motor vehicle while being operated on Illinois' roads. *Id.*

35 ILCS 505/1.1 states:

"Motor Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel" as defined in Section 1.13 of this Act.

35 ILCS 505/1.13 states:

"Special Fuel" means all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5, example (A), of this Act, or combustible gases as defined in Section 5, example (B), of this Act. "Special Fuel" includes diesel fuel as defined in paragraph (b) of Section 2 of this Act.

35 ILCS 505/1.8 states:

"Gallon" means, in addition to its ordinary meaning, its equivalent in a capacity of measurement of substance in a gaseous state.

35 ILCS 505/5 states, in part:

Except as hereinafter provided, a person holding a valid unrevoked license to act as a distributor of motor fuel shall, between the 1st and 20th days of each calendar

month, make return to the Department, showing an itemized statement of the number of invoiced gallons of motor fuel of the types specified in this Section which were purchased, acquired, received, or exported during the preceding calendar month; the amount of such motor fuel produced, refined, compounded, manufactured, blended, sold, distributed, exported, and used by the licensed distributor during the preceding calendar month; the amount of such motor fuel lost or destroyed during the preceding calendar month; the amount of such motor fuel on hand at the close of business for such month; and such other reasonable information as the Department may require.

...

The types of motor fuel referred to in the preceding paragraph are: (A) All products commonly or commercially known or sold as gasoline (including casing-head and absorption or natural gasoline), gasohol, motor benzol or motor benzene regardless of their classification or uses; and (B) all combustible gases which exist in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute including, but not limited to, liquefied petroleum gases used for highway purposes; and (C) special fuel.

### **Waste Management of Illinois, Inc.**

Waste Management provides waste collection, transfer, recycling and resource recovery, and disposal services to households and commercial businesses throughout Illinois. To service its customers, Waste Management operates a large fleet of motor vehicles, including its commonly-seen waste hauling trucks, on Illinois' roadways. During the tax periods in question, Waste Management had some of its motor vehicles operate using CNG as opposed to using diesel fuel, gasoline, or some other fuel. CNG is often touted as a clean, affordable and abundant alternative fuel source.

Waste Management purchased its CNG from a local gas supplier who delivered CNG to Waste Management via a pipeline. Waste Management stored the CNG in bulk fuel tanks at two natural gas compression and fueling stations in Illinois. Waste Management's vehicles which used CNG refueled at those two facilities.

CNG is created by compressing naturally-occurring methane gas from 14.7 pounds per square inch (psi)<sup>1</sup> to 3,600 psi and to less than 1% of its volume it occupies at standard atmospheric pressure. While CNG can be used in an internal combustion engine of a car or truck, the vehicle must be outfitted with an on-board CNG storage system, usually a cylindrical container. CNG passes from its container through a regulator which decompresses the natural gas to its natural psi, and then through a fuel injector where it is mixed with air and then enters the engine's combustion chambers where it is ignited by a spark plug and burned. CNG will only burn if it comprises between 5% to 15% of the gas/air mixture and with an ignition temperature twice that of gasoline, or 1,200 degrees Fahrenheit.

CNG is a gas in its natural state<sup>2</sup> and remains a gas when compressed. It is never a liquid at any point when it is compressed, stored, or used during the overall process used by Waste Management to fuel its vehicles. In order to be maintained in liquid form, natural gas would have to be cooled to approximately negative 260 degrees Fahrenheit and transported below 4 psi at a volume of 1/600th the volume of its natural occurring state.

## 2. Analysis

Summary judgment is proper when “the pleadings, depositions and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Performance Marketing Assoc., Inc. v Hamer*, 2013 IL 11496, ¶12 (2013) (quoting 735 ILCS 5/2-1005(c) (2010)). In the present case, Waste Management filed a Motion for Summary Judgment on Counts I, II and III of the Petition, the Department filed a Cross-Motion for Summary Judgment and Response to the Taxpayer's Motion for Summary Judgment, and Waste Management filed a Response to Respondent's Cross-Motion for Summary Judgment.<sup>3</sup> When both parties file motions for summary judgment, they agree that no material facts are in dispute and invite a decision as a matter of law. *Irwin Indus. Tool Co. v. Ill. Dep't. of Revenue*, 238 Ill. 2d 332, 340 (2010).

At this juncture, the findings contained in the tentative denial of claims issued by the Department are considered to *prima facie* correct and are

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<sup>1</sup> 14.7 psi is methane gas' atmospheric pressure at sea level.

<sup>2</sup> CNG is a combustible gas that exists in a gaseous state at 60 degrees Fahrenheit and 14.7 psi.

<sup>3</sup> As noted above, Waste Management voluntarily moved to dismiss Counts III and IV of the Petition.

*prima facie* evidence that the denial of claims are correct. 35 ILCS 505/21; 35 ILCS 120/6b. See *Copilevitz v. Dep't of Revenue*, 41 Ill. 2d. 154, 156-157 (1968).

Waste Management's core argument is that taxable motor fuel is specifically defined under 35 ILCS 505/1.1 to include only "volatile or inflammable liquids" as well as "special fuels" as defined in 35 ILCS 505/1.13 which are also circumscribed to include only liquid fuels. Because CNG is a gas and not a liquid, the plain and unambiguous definition of motor fuel in Section 1.1 exempts CNG from being a taxable motor fuel.

The Department counters that the MFTL statute is ambiguous and section 1.1 must be reviewed in conjunction with other sections of the motor fuel statute which, taken as a whole, allows for the inclusion of CNG in the definition of taxable motor fuels.

### A. Statutory Interpretation

"The fundamental rule of statutory interpretation is to determine and give effect to the intent of the legislature, and the statutory language is the best indicator of the legislature's intent." *Quality Saw & Seal, Inc. v. Ill. Commerce Comm'n*, 374 Ill. App. 3d 776, 781, (2nd Dist. 2007). "The best indication of legislative intent is the statutory language, given its plain and ordinary meaning." *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101,106 (2005). "Where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction." *Id.*

Waste Management is correct that the first sentence of 35 ILCS 505/1.1 which reads "Motor Fuel' means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles," facially suggests that the definition of motor fuel for purposes of the MFTL should be construed narrowly to include only liquid motor fuels. Under the statutory construction rule *expressio unius est exclusio alterius* (the express mention of one thing excludes all others), the use of certain terms such as the word "means" is generally, but not necessarily, intended as a limiting clause. See *Baker v. Miller*, 159 Ill. 2d 551, 260 (1994). But the Illinois Supreme Court has acknowledged that even presumptive limiting clauses must be read in the context of the purpose of a statute. "We recognize that the rule *expressio unius est exclusio alterius* is not a rule of law, but a rule of statutory construction which may be overcome by a strong indication of contrary legislative intent." *Id.*

Before one needs to look to legislative intent to overcome a presumed limiting clause in a statute, the plain language of the statute must be read in its entirety to give effect to all words and phrases in that statute. As an initial matter, the first sentence of 35 ILCS 505/1.1 must be read in conjunction with its second sentence which states “Among other things, "Motor Fuel" includes "Special Fuel" as defined in Section 1.13 of this Act.” While Special Fuel is defined in section 1.13 to include additional types of liquid fuels, one cannot ignore the prefatory phrase “Among other things” which precedes the inclusion of specified special fuels as motor fuels under the MFTL statute. Looking to the plain language of that phrase, motor fuel must include not only liquid fuels specifically described in 35 ILCS 505/1.1, but also “other things” (meaning other types of fuels beyond those specifically listed) as well. Accordingly, the term “motor fuel” under MFTL can clearly be read flexibly and fairly to include motor fuels, liquid and non-liquid, that are used in internal combustion engines to propel vehicles down Illinois’ roadways. Accordingly, the plain language of that MFTL statute section, alone, supports the inclusion of CNG as a taxable motor fuel, and because the language is clear and unambiguous, it is not necessary to look to external guidance to make that determination.

In its Response to the Department’s Cross-Motion for Summary Judgment, Waste Management argues that the term “Among other things” must refer to only liquids under the doctrine *ejusdem generis* (of the same kind) and cites to *People v. Davis*, 199 Ill. 2d. 130 (2002) to support its contention.

In *Davis*, Justice Morrow found that a pellet/BB gun did not meet the definition of a dangerous weapon for purposes of Illinois’ criminal armed violence statute, 720 ILC 5/33A-2. She wrote that criminal statutes are to be strictly construed in favor of the accused, *id.* at 135, and that “[t]he doctrine of *ejusdem generis* provides that when a statutory clause specifically describes several classes of persons or things and then includes ‘other persons or things,’ the word ‘other’ is interpreted as meaning ‘others such like.’” (citing cases). *Id.* at 138. Because the concluding phrase “any other deadly or dangerous weapon” followed a specific list of blade-type weapons in the armed violence statute, the Court found that a pellet/BB gun did not belong in that class of weapons.

The doctrine of *ejusdem generis* has no application in the present case. That doctrine applies when a general phrase using the word “other” follows a specific list. In 35 ILCS 505/1.1, the phrase “Among other things” precedes the term “motor fuel” and includes “Special Fuel.” Rather than being a limiting phrase, “Among other

things” is an expansive phrase that indicates “motor fuel” includes fuels other than the ones specifically listed.

While the statutory language of 35 ILCS 505/1.1 *et seq.* is the best indication of the legislator’s intent in enacting the MFTL statute, the Illinois legislature expressed its intent within the statute itself. 35 ILCS 505/17 states, in part:

It is the purpose of Sections 2 and 13a of this Act to impose a tax upon the privilege of operating each motor vehicle as defined in this Act upon the public highways and the waters of this State, such tax to be based upon the consumption of motor fuel in such motor vehicle, so far as the same may be done, under the Constitution and statutes of the United States, and the Constitution of the State of Illinois.

It is clear from the explicit language of 35 ILCS 505/17 that the legislature meant to tax the use of each motor vehicle on its highways and to measure the tax based on the consumption of motor fuel.<sup>4</sup> There is nothing to suggest in 35 ILCS 505/17 that any motor fuel is expressly exempted from that tax absent a provision in the MFTL stating as much, and there is none exempting CNG.

The Department suggests in its summary judgment motion that the MFTL statute is ambiguous and that this court should resort to reviewing other particular sections of that statute to determine the proper definition of “motor fuel.” Dep’t Mem. in Supp. of Cross-Mot. for Summ. J. at 12-22. Whether one looks at other sections of the MFTL statute after coming to the conclusion that the plain language of section 505/1.1 allows for an expansive and flexible reading of the term “motor fuel” or whether one reviews the entire statute after concluding that the term “motor fuel” is ambiguous, the result is the same. An interpretation of taxable motor fuel to include CNG is entirely consistent with the entire language of the MFTL statute.<sup>5</sup>

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<sup>4</sup> Taxable motor fuels are limited to fuels which can be used in a vehicle propelled by an internal combustion engine. 35 ILCS 505/1.3. That precludes the use of the solid fuel examples listed in the Pet’r Resp. at 5.

<sup>5</sup> “Taxing statutes are to be strictly construed. Their language is not to be extended or enlarged by implication, beyond its clear import. In cases of doubt they are construed most strongly against the government and in favor of the taxpayer.” *Vans’ Material Co., Inc. v Dep’t.*, 131 Ill. 2d 196, 202 (1989) (citing *Mahon v. Nudelman*, 377 Ill. 331, 335 (1941)).

## Use of the term “Gallon” in the MFTL

35 ILCS 505/1.8 states:

"Gallon" means, in addition to its ordinary meaning, its equivalent in a capacity of measurement of substance in a gaseous state.

“Gallon” is commonly known as a unit of volume of liquids. It is the unit of measurement to determine the tax on motor fuel. 35 ILCS 505/2(a). If taxable motor fuel under the MFTL statute was to be strictly limited to liquid fuel as Waste Management proposes, there would be no reason to include a section in the statute which allowed for gaseous substances to be measured in gallon equivalents, a unit of volume used for liquids.

A tenet of statutory construction is that “[s]tatutory provisions should be read in concert and harmonized.” *Hartney Fuel Oil Co. v Hamer*, 2013 IL 115130, ¶ 25 (citing *People v. Rinehart*, 2012 IL 111719, ¶ 26). If motor fuel under the MFTL did not include gaseous fuels, such as CNG, there would be no need for the term “gallon” to be defined to include equivalent measurements of gaseous fuels. If motor fuel under the MFTL only included liquid fuels, not only would there be no need for section 1.8 as all motor fuels would naturally be able to be measured solely by its liquid volume without reference to gaseous states, but defining motor fuels only as liquid fluids would render section 1.8 superfluous. Clearly, the legislature wished sections 1.1 and 1.8 to stand next each other in the MFTL and for those sections to be harmonized with each other. That can only be accomplished when taxable motor fuel under the MFTL includes gaseous fuels such as CNG.

### **CNG Reference by Description in the Motor Fuel Tax Law Statute**

CNG is defined by its natural state specifically as a motor fuel in one instance in the MFTL statute. 35 ILCS 505/5 requires distributors of certain types of motor fuels to report to the Department on a monthly basis those types of motor fuels in certain enunciated categories, such as amounts sold or manufactured. 35 ILCS 505/5 states, in part:

The types of motor fuel referred to in the preceding paragraph are: (A) All products commonly or commercially known or sold as gasoline (including casing-

head and absorption or natural gasoline), gasohol, motor benzol or motor benzene regardless of their classification or uses; and (B) all combustible gases which exist in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute including, but not limited to, liquefied petroleum gases used for highway purposes; and (C) special fuel.

The parties have stipulated that CNG is a combustible gas which exists in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute. Therefore, CNG is a type of motor fuel for which 35 ILCS 505/5 applies as it precisely meets the scientific description of motor fuels described under (B), above.

As the parties note, Section 5 requires the reporting of certain motor fuels and does not refer to the taxability of any particular type of motor fuel. Waste Management is not a distributor of CNG, and the reporting requirements of section 5 are not applicable to Waste Management. Nevertheless, CNG being a type of a “reportable” motor fuel under section 5 is entirely consistent with CNG being a motor fuel under section 1.1. and the language of section 5 supports the proposition that gaseous fuels, such as CNG, are included in the definition of motor fuel in section 1.1. Once a fuel can be included in the definition of motor fuel in section 1.1, as CNG can be, that fuel can specifically be selected for or exempted from categories of motor fuels to which other sections of the statute may apply or not apply. It is quite another thing to suggest that terms such as “motor fuel” may have one meaning in one section of a statute but a completely different meaning in another section of the same statute.

### **CNG Reference in the Retailer Occupation Tax Act (ROTA)**

As further justification for its argument that CNG is a taxable motor fuel under the MFTL, the Department points to the fact that CNG is specifically defined as a motor fuel in its regulations for the ROTA,<sup>6</sup> and that the MFTL and the ROTA regulations should be read “*in pari materia*” and be construed as a whole. 86 Ill. Adm. Code 130.101(b)(2)(C) provides, in part:

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<sup>6</sup> The Illinois Retailers’ Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. Taken together, those taxes comprise “sales tax” in Illinois.

C) "Motor Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel". [35 ILCS 505/1.1]

i) By way of illustration and not limitation, the following are considered motor fuel:

- Gasoline
- Diesel fuel
- Combustible gases (e.g., liquefied petroleum gas and compressed natural gas) delivered directly into the fuel supply tanks of motor vehicles
- Gasohol.

Waste Management counters that the definition of motor fuel under the ROTA regulations was expanded to capture tangible personal property not in a liquid form.<sup>7</sup> Waste Management further argues that the MFTL and the ROTA should not be read *in pari materia* as they tax different things (motor fuel/ tangible personal property).

“It is presumed that statutes which relate to the same subject are governed by one spirit and a single policy....Thus, in determining legislative intent when two statutory provisions address the same subject matter, the statutes are read *in pari materia* and an interpretation that gives effect to both provisions must be adopted. *Dundee Tp. v. Dep’t of Revenue*, 325 Ill. App. 3d 218, 223 (2d. Dist. 2001) (citing cases). Administrative regulations have the force and effect of law and are interpreted with the same canons as statutes. See *Hartney*, 2013 IL 115130 at ¶37 (citing *People ex rel. Madigan v. Ill. Commerce Comm’n*, 231 Ill. 2d 370, 380 (2008)).

The MFTL and the ROTA regulation defining motor fuel, 86 Ill. Adm. Code 130.101(b)(2)(C), relate to the same subject matter— motor fuel. The ROTA’s regulation’s definition of motor fuel is taken from section 1.1 of the MFTL: "Motor

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<sup>7</sup> Pet. Resp. to Dep’t Cross-Mot. for Summ. J. at 12-13.

Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel." The ROTA regulation continues on in defining motor fuel by providing some examples of motor fuel. The listed examples specifically include CNG. The only interpretation of motor fuel which gives effect to both the MFTL and the ROTA regulation which cross-references the MFTL is that taxable motor fuel includes CNG under the MFTL.

Waste Management's argument that the MFTL and the ROTA tax different things and, therefore, the ROTA regulation's definition of motor fuel carries no weight in defining motor fuel for the MFTL is rejected. Those two taxes may have two different purposes, but the taxable items under each taxing provision are not mutually exclusive. As Waste Management points out, the ROTA taxes tangible personal property. A type of tangible personal property can be motor fuel, and a type of motor fuel can be CNG. Both the MFTL and the ROTA should be read *in pari materia* in determining what fuels are encompassed by both provisions, and in doing so, support for CNG being defined as a taxable motor fuel under the MFTL is clearly supported by definition of motor fuel in the ROTA regulation.

## **B. The Department's Motor Fuel Regulations**

Pursuant to 35 ILCS 505/14, "[T]he Department of Revenue is authorized to make such reasonable rules and regulations relating to the administration and enforcement of the provisions of this Act, as may be deemed expedient."

Accordingly, the Department has issued numerous regulations over time concerning the MFTL which can be found at 86 Ill. Adm. Code 500.100 *et seq.* In those regulations, CNG is expressly referred to as a taxable motor fuel. Beginning in 1995, 86 Ill. Adm. Code 500.335(f) has specifically referred to CNG. The parties have stipulated that the 1995 language of that section, as amended, read:

For carriers registered under the IFTA which consume compressed natural gas and other fuels that cannot be measured in gallons, the fuels must be converted to gallons

using the conversion factor used by the jurisdiction in which the fuel was consumed. The conversion rate for compressed natural gas is 14.7 pounds per square inch for 1 gallon or 1.24 therms of compressed natural gas for 1 gallon.

Additionally, a 2014 amendment to 86 Ill. Adm. Code 500.200(c) provides,

Compressed natural gas is subject to tax at the rate established in subsection (a)(1). However, because compressed natural gas cannot be measured in gallons, it must be converted to gallons using a conversion factor. For purposes of calculating tax under the Motor Fuel Tax Law, a gallon of compressed natural gas means a quantity of compressed natural gas equal to 126.67 cubic feet of natural gas at 60 degrees Fahrenheit and one atmosphere of pressure. In the alternative, it means a quantity of compressed natural gas that weighs 5.66 pounds.

While administrative tax regulations have the force and effect of law, regulations may not broaden or narrow a statute's intended scope of taxation. *Hartney, supra*, at ¶37 (citing *Ex-Cello-O Corp. v. McKibbin*, 383 Ill. 316, 320 (1943)).

Because Waste Management advances the argument that CNG is not taxable under the MFTL statute, it claims the logical consequence of its argument is that any Department regulation, including section 500.200(c) above, that refers to CNG is impermissible and that any such regulation impermissibly broadens the scope of the MFTL. Because this court has found that CNG is a taxable motor fuel under the MFTL, any generalized argument that the Department cannot issue regulations that refer to CNG as a taxable motor fuel is unpersuasive and is rejected.

### **C. International Fuel Tax Agreement**

Since 1995, Illinois has been a member of the International Fuel Tax Agreement (IFTA). IFTA is a base jurisdiction motor fuel use tax agreement in which a base jurisdiction (usually a state) administers motor fuel use taxes for all IFTA jurisdictions and apportions payments to those jurisdictions. IFTA applies to interstate commercial motor vehicles. Stipulation Ex. E at 1.

The Department's regulations on MFTL refer to IFTA. In the 2014 amendments to the MFTL regulations, the Department included 86 Ill. Adm. Code 500.335(f)<sup>8</sup>, which reads:

For carriers registered under the IFTA that consume compressed natural gas and other fuels that cannot be measured in gallons, the fuels must be converted to gallons using the conversion factor used by the jurisdiction in which the fuel was consumed. See Section 500.200(c) for the conversion factor used for compressed natural gas.

In continuing its argument that CNG is not a motor fuel under the MFTL, Waste Management argues that the Department cannot bootstrap the ability to tax CNG merely by arguing that Illinois is a member of IFTA, because IFTA, by itself, does not have the power to tax as that power remains with each member state of IFTA. The Department expressly disavows making that argument.<sup>9</sup> Membership in IFTA, solely by itself and absent an underlying enabling tax statute, does not allow a state to tax motor fuel. However, membership in IFTA, and cross-references to IFTA either in the MFTL or the MFTL regulations, can be argued that the definition of taxable motor fuel is consistent throughout those authorities.

Specifically, 35 ILCS 505/14a provides, in part:

Pursuant to federal mandate, upon membership in the International Fuel Tax Agreement ("Agreement"), the motor fuel use tax imposed upon Commercial Motor Vehicles required to be registered under the terms of the Agreement shall be administered according to the terms of the Agreement, as now and hereafter amended. Illinois shall not establish, maintain, or enforce any law or regulation that has fuel use tax reporting requirements or that provides for the payment of a fuel use tax, unless that law or regulation is in conformity with the Agreement.

The Department shall adopt rules and regulations to implement the provisions of the Agreement.

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<sup>8</sup> The parties have stipulated that 86 Ill. Adm. Code 500.335(f) has referred specifically to CNG since 1995. The 2014 amendment added the conversion factor reference to section 500.200(c).

<sup>9</sup> Dep't. Mem. in Supp. of Cross-Mot. for Summ. J. fn. 13.

In any event, because this court finds that CNG is a taxable motor fuel under the MFTL solely by looking at that statute's language, any singular IFTA-based argument, if one were to be made, would be rejected.

#### **D. CNG is Not Exempt from Taxation**

In its Response to the Department's Cross-Motion for Summary Judgment, Waste Management criticizes the Department's recasting Waste Management's argument for exclusion of CNG as a taxable motor fuel because CNG's gaseous state puts it outside the scope of the MFTL. The Department suggested that, because it views CNG as taxable under that statute's language, Waste Management was claiming that CNG is exempt from taxation under the MFTL. Dep't Cross-Mot. for Summ. J. at 37. The Department then argues that Illinois law provides that any doubts concerning an exemption from taxation are to be construed against the exemption and construed strictly in favor of taxation. *See Central Illinois Light Co. v. Dep't of Revenue*, 336 Ill. App. 3d 908, 912 (3rd Dist. 2003). Waste Management is correct in that it did not argue that CNG was specifically exempted from the MFTL, rather Waste Management argued that CNG was excluded under the definition of motor fuel under the MFTL.

CNG is taxable under the MFTL because it does fit under the definition of taxable motor fuel under this court's analysis of the MFTL. The Department's conclusion about Waste Management's core argument essentially being about exemptions and the resulting stricter standard that it insists should be applied in this case is rejected. Any argument about exemptions is irrelevant as to whether or not the language of the MFTL supports the inclusion of CNG as a taxable motor fuel.

#### **E. The Constitutionality of the Taxing CNG as Motor Fuel**

In Count II of its Petition, Waste Management argues that the Department's assertion that CNG is a taxable motor fuel when support for that contention is not found in the MFTL violates the Illinois Constitution as only the General Assembly, the legislative branch of state government, has the power to tax and the Department, an agency of the executive branch of state government, cannot exercise those powers. Ill. Const. art.I, § 9 and art. II, §1.

According to Waste Management, because the regulations that treat CNG as a taxable motor fuel were an impermissible broadening of the MFTL, that those regulations which address CNG as a taxable motor fuel violate the Illinois

Constitution as the executive branch (the Department) usurped the power of the legislative branch by declaring CNG taxable without authority from the underlying MFTL statute.

Because this court has found that CNG is a taxable motor fuel under the MFTL, it follows that the Department is entitled to administer and enforce the MFTL, including issuing regulations thereunder. “Administrative agencies have deference in enacting regulations, and regulations are presumed valid.” *Hartney Fuel Oil Co.*, 2013 IL 115130 at ¶59. The Department acted under its authority derived from the MFTL in determining CNG was a taxable motor fuel and did not make that determination out of whole cloth and without legal authority. The Department did not create rules or take actions inconsistent with the MFTL. Accordingly, the argument that the Department’s actions in assessing motor fuel tax on Waste Management on its use of CNG in this case violate the Illinois Constitution is rejected.

Moreover, even if this court were to accept Waste Management’s argument, it would be without authority to declare any motor fuel regulation unconstitutional under the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 *et seq*). Section 45(f) of the Tax Tribunal Act allows the Tax Tribunal to decide questions of constitutionality for statutes and rules adopted by the Department as applied to an individual taxpayer, but the Tax Tribunal cannot declare a statute or rule unconstitutional.

## F. Conclusion

Count III of the Petition is dismissed with prejudice. Count IV of the Petition is dismissed with prejudice. Waste Management’s Summary Judgment Motion is Denied. The Department’s Cross-Motion for Summary Judgment is Granted and the Department’s 32 Notices of Tentative Denials of Claims are Affirmed.

This is a final order subject to appeal under section 3-113 of the Administrative Review Law, and service by email is service under section 3-113(a). *See* 35 ILCS 1010/1-90; 86 Ill. Adm. Code 5000.330. The Tribunal is a necessary party to any appeal.

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

Date: October 3, 2016