

No. 129562

 IN THE SUPREME COURT OF ILLINOIS

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| MARATHON PETROLEUM COMPANY, |) | |
| LP f/k/a MARATHON PETROLEUM |) | On Appeal from the Appellate Court |
| of COMPANY, LLC, |) | Illinois, First Judicial District |
| |) | No. 1-21-0635 |
| |) | |
| Plaintiff-Appellant, |) | There Heard on Appeal from the |
| |) | Circuit Court of Cook County |
| v. |) | Illinois, County Department, Tax & |
| |) | Miscellaneous Remedies Section |
| |) | |
| |) | No. 2019 L 050614 |
| COUNTY OF COOK, COOK COUNTY |) | |
| DEPARTMENT OF REVENUE, et al., |) | The Honorable John J. Curry |
| |) | Judge Presiding |
| Defendants-Appellees. |) | |

**AMICI CURIAE BRIEF OF THE COUNCIL ON STATE TAXATION AND THE
 TAXPAYERS' FEDERATION OF ILLINOIS
 IN SUPPORT OF THE PLAINTIFF-APPELLANT MARATHON PETROLEUM
 COMPANY, L.P. F/K/A/ MARATHON PETROLEUM COMPANY LLC**

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**TABLE OF CONTENTS
AND
POINTS OF AUTHORITIES**

| | |
|--|----------|
| STATEMENT OF INTEREST OF THE AMICI CURIAE | 1 |
| Council On State Taxation, <i>Fair, Efficient, and Customer-Focused Tax Administration</i> , https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/fair-efficient-and-customer-focused-tax-administration---revised-april-2023---final.pdf (last visited Oct. 22, 2023)..... | 2 |
| Taxpayers’ Federation of Illinois, <i>Statement of Principles</i> , https://www.illinoistax.org/index.php/taxpayers-federation-of-illinois-statement-of-principles/ (last visited Oct. 31, 2023)..... | 2 |
| INTRODUCTION AND SUMMARY OF ARGUMENT | 4 |
| I. The Department’s Position is Contrary to the Plain Meaning of Cook County’s Ordinance..... | 5 |
| Cook County Ordinance § 74-471 | 5 |
| Cook County Ordinance § 74-472(a)–(b)..... | 5 |
| Cook County Ordinance § 74-472(c)..... | 5, 6 |
| <i>Bovinette v. City of Mascoutah</i> , 55 Ill. 2d 129 (1973)..... | 6 |
| <i>Marathon Petroleum Co. LP v. Cook Cty. Dep’t of Revenue</i> , 2022 IL App (1st) 210635 (Dec. 30, 2022) | 6 |
| <i>Antunes v. Sookhakitch</i> , 146 Ill. 2d 477 (1992) | 6 |
| Cook County Ordinance §§ 74-471, 74-472(a)–(b)..... | 7 |
| Ord. No. 11-O-19, 2-16-2011, Cook County Code § 74-472(c)..... | 7 |
| II. Cook County’s Motor Fuel Tax is Imposed on the Retail Purchase of Gasoline and Diesel Fuel | 8 |
| Liz Malm, Tax Foundation, <i>When Did Your State Enact Its Gas Tax?</i> https://taxfoundation.org/blog/when-did-your-state-enact-its-gas-tax/ (last visited Oct. 22, 2023)..... | 8 |
| Alaska Stat. § 43.40.010(a)..... | 8 |

TABLE OF CONTENTS
AND
POINTS OF AUTHORITIES
(continued)

| | |
|--|---|
| Cal. Rev. & Tax. Code § 7337 | 8 |
| Colo. Rev. Stat. § 39-27- 101(28)..... | 8 |
| Ga. Code Ann. § 48-9-2(14)..... | 8 |
| Ky. Rev. Stat. Ann. § 138.210(15) | 8 |
| La. Rev. Stat. Ann. § 47:818.2(59)..... | 8 |
| Mass. Gen. Laws Chapter 64A, § 1 | 8 |
| Mich. Comp. Laws § 207.1008..... | 8 |
| Mo. Rev. Stat. § 142.800(50)..... | 8 |
| N.Y. Tax Law § 282(5)..... | 8 |
| Ohio Rev. Code § 5735.05(A) | 8 |
| R.I. Gen. Laws § 31-36-7(a)..... | 8 |
| W. Va. Code § 11-14C-5 | 8 |
| Wis. Stat. § 78.01(1)..... | 8 |
| Wyo. Stat. Ann. § 39-17-103(a)..... | 8 |
| Tax Administrators, <i>2022 Motor Fuel Tax Information by State</i> , https://taxadmin.org/wp-content/uploads/resources/motor-fuels/2022-motor-fuel-taxinformation-by-state-book.pdf (last visited Oct. 22, 2023)..... | 8 |
| Ulrik Boesen, Tax Foundation Fiscal Fact No.725, August 2020, “ <i>Who will pay for the roads</i> ”, https://taxfoundation.org/research/all/federal/road-funding-vehicle-miles-traveled-tax/ (last visited October 26, 2023)..... | 9 |
| 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016..... | 9 |
| Cook County Ordinance § 74-472(a)–(b)..... | 9 |

**TABLE OF CONTENTS
AND
POINTS OF AUTHORITIES
(continued)**

Whitman v. American Trucking Associations, Inc., 531 U.S. 457 (2001)9

CME Group, *Crude Oil Futures – Volume & Open Interest*,
<https://www.cmegroup.com/markets/energy/crude-oil/light-sweetcrude.volume.html> (last visited Oct. 22, 2023).....10

CONCLUSION10

STATEMENT OF INTEREST OF THE *AMICI CURIAE***The Council On State Taxation**

The Council On State Taxation (“COST”) is a nonprofit trade association based in Washington, D.C. COST was organized in 1969, formally as an advisory committee to the Council of State Chambers of Commerce. Its membership is comprised of over 500 multistate and multinational corporations doing business in every state in the country. COST’s objective is to preserve and promote equitable and non-discriminatory state and local taxation of multijurisdictional business entities, many of which do business in Illinois and Cook County.

Clearly written and consistently interpreted statutes and ordinances are paramount to fair and equitable tax administration and compliance. All taxpayers need to be able to rely on the plain meaning and application of tax laws. Clearly written guidance adopted by a state or local jurisdiction is particularly important for multijurisdictional taxpayers, including COST members, that are required to know and follow the tax laws of multiple states and their local taxing jurisdictions. Guidance based on the plain meaning of a law’s words promotes sound tax policy and creates certainty and predictability, reduces confusion, prevents unintentional non-compliance, and enhances fairness and equity in the tax system. By creating a transparent and understandable framework, clear interpretation of tax laws ensures that such laws serve their intended purposes while building and maintaining public trust in the tax system. This fosters voluntary compliance and promotes a stable economic environment for the states and/or their local taxing jurisdictions.

Taxpayers’ Federation of Illinois

The Taxpayers’ Federation of Illinois (“TFI”) is a nonpartisan membership organization composed of large and small businesses, individuals, and tax professionals

who are either based in Illinois or who have a meaningful presence in the State. Created to serve Illinois' citizens in 1940, TFI has been integrally involved in all major Illinois tax and fiscal policy discussions for over 75 years.

TFI's purpose is to represent and be an advocate for Illinois taxpayers. TFI fosters sound fiscal policies, and efficient and economic operation of Illinois government programs at both the state and local levels, to develop reasonable and responsible systems of taxation to support those programs. To that end, TFI evaluates and comments on Illinois' overall state and local tax structure using the following guideposts: (1) adequacy; (2) stability/predictability; (3) equity/fairness; (4) collectability/transparency/simplicity; and (5) efficiency.

COST and TFI Interests in This Case

COST and TFI have longstanding interests in seeking fair, efficient, and customer-focused tax administration.¹ The appellate court's opinion affirming the Cook County Department of Administrative Hearings ("Administrative Hearings") decision in this case, however, puts the principle of impartial and fair tax administration at serious risk. Taxpayers can take little comfort in complying with existing statutes if a tax agency, such as the Cook County Department of Revenue ("Department"), can simply disregard the plain statutory language without clear legislative authority, advance notice, or any

¹ COST has a specific policy position on fair, efficient, and customer-focused tax administration. COST, *Fair, Efficient, and Customer-Focused Tax Administration*, <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/fair-efficient-and-customer-focused-tax-administration---revised-april-2023---final.pdf> (last visited Oct. 22, 2023). TFI has like-minded policies. See TFI, *Statement of Principles*, <https://www.illinoistax.org/index.php/taxpayers-federation-of-illinois-statement-of-principles/> (last visited Oct. 31, 2023).

published regulatory or policy guidance. Both COST and TFI have a direct interest in the case before this Court because their membership bases include entities that are subject to the Cook County Gasoline and Diesel Tax (“Motor Fuel Tax”) or could be subject to the Motor Fuel Tax because of the court of appeals decision. COST and TFI have a greater interest to be heard in this appeal because the appellate court’s decision puts the principle of impartial and consistent tax administration at serious risk.

Any Illinois home rule unit of government imposing a tax on purely financial transactions solely at its own discretion without clear legislative approval or regulatory guidance concerns both COST’s and TFI’s membership. If the appellate court decision is allowed to stand, the scope of that discretion to expand the imposition of its taxes could be boundless. An Illinois home rule jurisdiction does not have unlimited discretion to allow it to impose new taxes or extend its taxing authority on certain transactions without legislative authority. Allowing home rule jurisdictions unbridled discretion to expand the scope of their taxing authority merely by reinterpreting its taxing laws without any legislative authority places an undue burden on Illinois and multistate businesses conducting operations within Illinois.

It is in the interest of COST and TFIs members, both as taxpayers and statutory collection agents under home rule ordinances, that Illinois home rule units engage in the political process when seeking to extend the scope of their taxing authority. It should not be conducted through arbitrary reinterpretations of existing tax laws.

TFI and COST collectively seek state and local tax systems to provide certainty, effectiveness, and fairness, as well as avoiding duplicative or pyramiding of a tax. A fair,

neutral, and efficient tax system is grounded on not allowing taxing jurisdictions to expand the scope of a tax beyond the legal parameters of a tax. It is clear the Motor Fuel Tax imposed by Cook County is only authorized to be imposed on the ultimate retail purchaser / consumer of the motor fuel in the County. As long-standing representatives of taxpayers, TFI and COST are uniquely positioned to provide this Court with context on why the appellate court incorrectly held that the Motor Fuel Tax extends to purely financial transactions. TFI and COST members have significant activities and operations in all 50 states and are directly impacted by the appellate court's decision because other taxing jurisdictions could potentially use the appellate court's decision as guidance to unlawfully expand the scope of their motor fuel tax to intangible transactions.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents an issue of first impression in Illinois and nationwide concerning the imposition of a motor fuel tax on transactions that do not reflect actual sale, exchange, or transfer of motor fuel — for use or consumption and not for retail — but are merely financial transactions. Marathon is challenging the Department's imposition of Motor Fuel Tax on forward contracts for the future sale and delivery of motor fuel, which were ultimately financially settled for cash, without any exchange or transfer of motor fuel with the counterparty. Marathon, like most businesses in the motor fuel industry, has forward contracts with third parties to buy and sell gasoline and diesel fuel. Under the terms of these contracts, the delivery of the gasoline or diesel occurs at a future date. The terms of these “forward contracts” permit performance by financially settling each party's respective contractual obligations with a payment in lieu of any product delivery. Similar to others in the motor fuel industry, Marathon, for commercial reasons, financially settles the forward

contracts.² Importantly, the financial settlement of “forward contracts” results in no sale, exchange, or transfer of gasoline or diesel fuel between Marathon and its counterparty in Cook County (or another location).

I. THE DEPARTMENT’S POSITION IS CONTRARY TO THE PLAIN MEANING OF COOK COUNTY’S ORDINANCE.

It is critical to understand that the purpose of the Motor Fuel Tax is to tax gasoline and diesel fuel for use in motor vehicles. The tax does not extend to a financial transaction (or the sale of an intangible ownership interest in such fuel) as the appellate court concluded. The Motor Fuel Tax, as with most motor fuel taxes levied across the country, is primarily based on the distribution of gasoline and diesel fuel used to propel motor vehicles on public roads.³ The Cook County Motor Fuel Tax ordinance states that “the tax is on the retail sale” of motor fuel, is “to be paid by the purchaser,” and “the incidence and liability for payment” of the tax “is to be borne by the consumer of” motor fuel. Cook County Ordinance § 74-472(a)–(b). The tax is collected by a distributor or supplier who sells motor fuel to a (1) “retail dealer doing business in the County,” (2) a “consumer who purchases” motor fuel “for delivery in the County,” or (3) another distributor “not holding a valid registration certificate” in the County. Cook County Ordinance § 74-472(c). The Cook County Motor Fuel Tax ordinance does not levy tax on economic equivalents, contracts, intangible rights, or intangible interest in a commodity or services. In finding

² Frequently, prior to the future delivery date, Marathon or its counterparty recognizes that it is unable to fulfill the delivery obligation, or the receiving party has no need for the gasoline and diesel.

³ See Cook County Ordinance § 74-471 (“products sold as gasoline” and “any petroleum product” are subject to tax).

that such intangible rights are subject to tax, the appellate court ignored the plain language of the ordinance and expanded the motor fuel tax base in direct violation of elementary statutory construction principles. *See, e.g., Bovinette v. City of Mascoutah*, 55 Ill. 2d 129, 133 (1973).

The transactions at issue in this case involve no sale, exchange or transfer of gasoline or diesel from a seller to a purchaser in Cook County. In contrast, Marathon's transactions are financial in nature. As evidenced by the plain language of the ordinance, the intent of the Motor Fuel Tax is to impose tax on motor fuel that is purchased by consumers in the County. Cook County Ordinance § 74-472(a)–(b). No consumer will ultimately bear the incidence of a tax assessed on the transactions at issue. Not only is the appellate court's holding that "the transfer of [a gasoline and diesel] intangible ownership interest is enough to make these transactions taxable" an unsupported expansion of the ordinance, it lays the unfounded groundwork for double taxation, *i.e.*, the taxation of the financial transaction and the subsequent sale of the motor fuel to the consumer. *See Marathon Petroleum Co. LP v. Cook Cty. Dep't of Revenue*, 2022 IL App (1st) 210635, ¶ 37 (Dec. 30, 2022). Additionally, expanding the scope of the ordinance would encourage Illinois home rule jurisdictions, as well as other state and local taxing jurisdictions, to adopt similar interpretations and expand the reach of their taxing authority to intangible transactions.

Taxpayers should have the ability to rely on clear and fair tax laws. Sound tax policy dictates that tax laws are given their plain meaning. In this case, Cook County's Motor Fuel Tax must be construed in its entirety, so that the words and provisions are not construed in isolation. *Antunes v. Sookhakitch*, 146 Ill. 2d 477, 484 (1992). The clear language of the

Motor Fuel Tax is that it imposes a tax on retail sales of gasoline and diesel for use or consumption, not intangible interests (*i.e.* financial transactions). Cook County Ordinance §§ 74-471, 74-472(a)–(b).⁴ The appellate court’s holding dangerously expands the scope of the ordinance to tax intangible interests in motor fuel. The ramifications of the appellate court decision interpreting this ordinance contrary to its plain wording cast a pall of uncertainty across other home rule taxing jurisdictions in the State. The appellate court’s decision creates substantial uncertainty for taxpayers who seek and rely upon fair and consistent application of the taxing laws.

Taking the clear intent of the ordinance’s drafters into consideration and construing Cook County’s Motor Fuel Tax in its entirety — leads to only one conclusion — transactions which are solely financial in nature are not subject to the tax because: (i) the tax is imposed on the retail sale of motor fuel, or the sale of motor fuel between unregistered distributors; and (ii) the transactions at issue are void of the actual distribution of sale, exchange or transfer of motor fuel in the County. This conclusion is consistent with the imposition of motor fuel taxes across the nation.

⁴ Notably, when the tax was enacted, it required the collection of the tax from the purchaser of “fuel in the possession of distributors or retailers on the effective date of the ordinance.” Ord. No. 11-O-19, 2-16-2011, Cook County Code § 74-472(c) (emphasis added). To ensure collection, the County provided that “[i]f a retail dealer shall receive . . . fuel upon which no tax has been collected by the distributor or supplier . . . then the retail dealer shall collect such tax directly to the Department within 30 days of the receipt of” such fuel. *Id.* § 74-472(f) (emphasis added). The “retail sale” envisioned by the drafters clearly envisioned a sale of fuel on the distributor/supplier’s books, and a “receipt” of such fuel by the purchaser. *Id.* The financial tractions at issue do not fulfill the design of the drafters as no “receipt” ever takes place.

II. COOK COUNTY'S MOTOR FUEL TAX IS IMPOSED ON THE RETAIL PURCHASE OF GASOLINE AND DIESEL FUEL.

The appellate court's decision creates a dangerous precedent by permitting Cook County to impose the Motor Fuel Tax, a tax imposed on the retail sale of gasoline and diesel, on an intangible transaction. Upholding the appellate court's decision would impermissibly permit Cook County to be the first jurisdiction in this State to adopt such a position; the vast majority of the states to impose a motor fuel tax on a financial transaction that involves no sale, transfer or exchange of gasoline or diesel. States have levied taxes on motor fuel since 1919.⁵ Today, the federal government, all 50 states, the District of Columbia, and hundreds of localities across the nation, impose motor fuel taxes. Not one of these taxes is imposed on transactions that are devoid of the actual sale or transfer of the motor fuel product within their taxing jurisdiction. *See, e.g.*, Alaska Stat. § 43.40.010(a), Cal. Rev. & Tax. Code § 7337; Colo. Rev. Stat. § 39-27- 101(28); Ga. Code Ann. § 48-9-2(14); Ky. Rev. Stat. Ann. § 138.210(15); La. Rev. Stat. Ann. § 47:818.2(59); Mass. Gen. Laws Ch. 64A, § 1; Mich. Comp. Laws § 207.1008; Mo. Rev. Stat. § 142.800(50); N.Y. Tax Law § 282(5); Ohio Rev. Code § 5735.05(A); R.I. Gen. Laws § 31-36-7(a); W. Va. Code § 11-14C-5; Wis. Stat. § 78.01(1); Wyo. Stat. Ann. § 39-17-103(a).⁶ Motor fuel taxes expressly intended to be borne by consumers should not be imposed on the settlement of

⁵ The first state to enact a gas tax was Oregon. *See* Liz Malm, Tax Foundation, *When Did Your State Enact Its Gas Tax?* <https://taxfoundation.org/blog/when-did-your-state-enact-its-gas-tax/> (last visited Oct. 22, 2023).

⁶ *See also* Federal of Tax Administrators, *2022 Motor Fuel Tax Information by State*, <https://taxadmin.org/wp-content/uploads/resources/motor-fuels/2022-motor-fuel-taxinformation-by-state-book.pdf> (last visited Oct. 22, 2023) (the Federation of Tax Administrators serves as a source of information and expertise for state tax administrators; the booklet contains motor fuel tax statutes for all taxing jurisdictions).

financial contracts, as erroneously held by both the appellate court and Administrative Hearings.

The purpose of state, local, and federal motor fuel taxes is to fund the use of public roadways. The primary incidence of those taxes is intended to fall on those who use the roadways in a given jurisdiction, generally the consumers of the motor fuel in those jurisdictions.⁷ The Illinois General Assembly in discussing motor fuel taxes recognized that the incidence of the motor fuel tax ultimately falls upon the final consumer — when “people go to the gas pump, they want to make sure that the taxes — motor fuel taxes that they’re paying goes to repairing the roads that they drive on.”⁸ The language of the Motor Fuel Tax is consistent with both the purpose and intent of motor fuel taxes that are to be imposed on and borne by consumers who purchase, at retail, gasoline, or diesel.⁹ As the maxim goes, “Congress . . . does not, one might say, hide elephants in mouseholes.”¹⁰ The appellate court decision ignores the fundamental purpose of motor fuel taxes, the parties that bear the burden of those taxes, and erroneously results in the imposition of a tax on a transaction where no gasoline or diesel is sold, transferred or exchanged.

The appellate court’s decision is not grounded in sound legal theory and has widespread application outside the Motor Fuel Tax. The appellate court’s decision lays the

⁷ See Ulrik Boesen, Tax Foundation Fiscal Fact No.725, August 2020, “*Who will pay for the roads*”, <https://taxfoundation.org/research/all/federal/road-funding-vehicle-miles-traveled-tax/> (last visited October 26, 2023).

⁸ 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016, at 58–59.

⁹ The Motor Fuel Tax states: “[T]he incidence of and liability for payment of the tax levied in this Article is to be borne by the consumer of the gasoline, diesel fuel...” Cook County Ordinance § 74-472(a)–(b).

¹⁰ *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457, 468 (2001).

potential legal groundwork for Illinois home rule jurisdictions as well as other state and local jurisdictions to improperly expand the imposition of excise taxes to financial or intangible transactions that are beyond the purview of the taxing laws. The appellate court's decision could open the door for Illinois taxing jurisdictions to creatively impose impermissible sales and excise taxes on transfers of intangibles that include stocks, bonds, forward contracts, future contracts, and a wide array of commodities that are traded on financial markets and exchanges. Consequently, this Court's decision could have adverse ripple effect on institutions such as the commodity exchanges in this State¹¹ and other commodity exchanges.

CONCLUSION

For the foregoing reasons, COST and TFI respectfully ask this Court to reverse the appellate court and Administrative Hearings and affirm that the Motor Fuel Tax may not be imposed on transactions that are financial in nature.

¹¹ See CME Group, *Crude Oil Futures – Volume & Open Interest*, <https://www.cmegroup.com/markets/energy/crude-oil/light-sweetcrude.volume.html> (last visited Oct. 22, 2023) (showing thousands of contracts and zero deliveries).

Dated: October 31, 2023

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SUPREME COURT RULE 341(c) COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 11 pages.

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