No. 129562

IN THE
SUPREME COURT OF ILLINOIS

MARATHON PETROLEUM, CO. LP
f/k/a MARATHON PETROLEUM CO., LLC,

Plaintiff-Appellant,

v.

COUNTY OF COOK, COOK COUNTY
DEPARTMENT OF REVENUE, et al.

Defendants-Appellees.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 21-0635.
There Heard On Appeal from the Circuit Court of Cook County, Illinois,
County Department, Tax & Miscellaneous Remedies Section, No. 2019 L 050614.
The Honorable John J. Curry, Judge Presiding

REPLY IN SUPPORT OF REQUEST FOR CROSS-RELIEF

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E-FILED
7/29/2024 9:54 AM
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ARGUMENT IN CROSS-REPLY

In our brief in support of cross-relief, we explained that the Department's determination not to forgive the imposition of late-payment and negligence penalties here was not against the manifest weight of the evidence. Under the Code, late-payment penalties must be forgiven if the taxpayer has shown "reasonable cause" for its actions, Cook County Code of Ordinances ("Code") § 34-68(c), with reasonable cause being governed by "the reasonable cause criteria of the United States Internal Revenue Service," *id.* § 34-76. As the appellate court itself observed, this case involves a "fail[ure] to pay" taxes, A17, and federal law is clear that reasonable cause for a failure to pay taxes requires the taxpayer to show that it was "either unable to pay the tax or would suffer an undue hardship" as a result of such payment, 26 C.F.R. § 301.6651-1(c)(1).

Marathon did not attempt this showing before the Department, foreclosing any argument that the penalties here should be abated. Rather, Marathon claimed it had satisfied the reasonable-cause standard applicable to underpayments of taxes, 26 C.F.R. § 1.6664-4, which is inapplicable here because no tax was collected and remitted on *any* of the individual fuel transactions at issue. But even assuming that the underpayment criteria applied, the Department committed no manifest error in finding those criteria unsatisfied, where Marathon did not satisfy "the most important factor" under those criteria – namely, "the extent of the taxpayer's effort to

assess the taxpayer's proper tax liability." 26 C.F.R. § 1.6664-4(b)(1).

Marathon's arguments to the contrary are easily disposed of. First, and most obviously, Marathon has forfeited any argument under *either* of the Internal Revenue Service's "reasonable cause" standards, by failing to argue ether (1) inability to pay or undue burden, as required under the standard applicable to nonpayments and late payments, *or* (2) that it made a reasonable advance effort to determine its tax liability, which is the most important factor under the standard applicable to underpayments. Second, even if this court forgives that forfeiture, the demanding reasonable-cause standard applicable to nonpayment and late payment of taxes controls here, and Marathon did not satisfy that standard. Third, even assuming that the more lenient reasonable-cause standard for underpayments were applicable, the scant evidence Marathon presented below does not remotely show any effort to assess proper tax liability, which is, again, the most important consideration and must be shown to obtain forgiveness of underpayment penalties. Each of these failings is independently dispositive; we address them in turn.

I. Marathon Has Forfeited Any Argument That It Satisfied Either Federal Reasonable-Cause Standard.

In its response, Marathon does not dispute – because it cannot – that the appellate court committed legal error when it evaluated reasonable cause under the language of the Illinois Administrative Code, rather than the federal standards incorporated by the controlling County ordinance. Rather,

it disputes only *which* federal standard applies here.

Any debate on that subject is purely academic, because Marathon has forfeited any argument that it satisfied either federal standard. Marathon does not dispute that it showed neither an inability to pay nor undue hardship, 26 C.F.R. § 301.6651-1(c)(1), thus forfeiting any argument on that point and effectively conceding that it failed to show reasonable cause under the federal standards applicable to nonpayment or late payment of taxes. Nor does Marathon even *acknowledge* the "most important factor" to be considered when determining reasonable cause for an underpayment – the advance effort made to assess proper tax liability, 26 C.F.R. § 1.6664-4(b)(1) – let alone claim that it came forward with evidence on that subject sufficient to show a manifest error here.

That forfeits any argument that any such efforts were made, *e.g.*, *Bartlow v. Costigan*, 2014 IL 115152, ¶52, and effectively concedes that there was no reasonable cause here even under the lenient standards applicable to underpayments. As the federal courts have explained, there is "no genuine issue of material fact with respect to reasonable cause" for an underpayment when, as here, a taxpayer "made no effort to ascertain his tax status" and rested his reasonable-cause argument solely on his "own interpretation" of the tax law in question. *Barrett v. United States*, 561 F.3d 1140, 1149-50 (10th Cir. 2009); *accord Van Scoten v. Commissioner*, 439 F.3d 1243, 1260 (10th Cir. 2006) (affirming imposition of penalty where record showed

taxpayer "made little, if any, effort to assess their proper tax liability"). Notably, that is true even when the court considers the tax law in question "convoluted." *Barrett*, 561 F.3d at 1149.

II. The Reasonable-Cause Standards For Nonpayment And Late Payment Of Taxes Apply Here.

Even if this court forgives Marathon's forfeitures, the result would be the same because Marathon's arguments are uniformly without merit. Most easily disposed of is Marathon's claim that the negligence penalty imposed by Revenue is "akin to" the negligence penalty that may be forgiven under the federal reasonable-cause criteria appliable to underpayments. Cross-Response 34 (citing 26 U.S.C. § 6662). In making this argument, Marathon overlooks that *the Code does not allow forgiveness of negligence penalties*.[1] The penalties for negligent or willful nonpayment of taxes are entirely separate from, and imposed "in addition" to, the penalties imposed elsewhere for late payment of taxes. Code § 34-70(b); *see* C. 3308 (assessing separately negligence and late-payment penalties).

This is significant because, unlike the Code provision governing late-payment penalties, the Code provision governing negligence and willfulness penalties contains no language allowing the forgiveness of those penalties,

[1] We do not understand the appellate court to have meant to say that reasonable cause required forgiveness of the negligence penalty here, since it addressed only the reasonable-cause provisions applicable to late-payment penalties. If the appellate court intended to require forgiveness of the separate negligence penalty, then that was a clear misapplication of the plain language of the Code, as we explain below.

whether that be for reasonable cause or any other reason. That is strong indicia that no forgiveness of these penalties was contemplated, since "[i]t is well settled that, by employing certain language in one instance and wholly different language in another, the legislature indicates that different results were intended." *People v. Santiago*, 236 Ill. 2d 417, 431 (2010) (cleaned up). This conclusion is further reinforced by the fact that the Code's late-payment penalty provisions nowhere identify negligent or willful failure to pay among the acts for which that penalty may be forgiven. This further indicates that no such forgiveness was intended under the principle of *expressio unius est exclusio alterius*, which teaches that "the enumeration of exceptions in a statute is construed as an exclusion of all other exceptions." *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 286 (2003). The Code having authorized no exceptions to the negligence penalties, while separately authorizing exceptions to late-payment penalties, demonstrates that no exceptions to the negligence penalties were contemplated.

That leaves only Marathon's argument that the separate late-payment penalty is also more "akin" to the federal negligence penalty, Cross-Response 34, but this entire argument rests on Marathon's belief that the more demanding federal standard for forgiving failures to pay is applicable only when an individual has (1) failed to pay a tax listed as due on a return; or (2) fails to pay the tax within a certain amount of time after a government notice and demand, *id.* at 31-34 (citing 26 U.S.C. § 6651). But this argument

overlooks that the United States Supreme Court has made clear that the more stringent reasonable-cause standard *also* applies when penalties are imposed "because of a late filing." *United States v. Boyle*, 469 U.S. 241, 242 (1985). This is reflected in the plain language of the federal regulations, which state that the stricter reasonable-cause provision reaches a "failure to . . . pay [a] tax on time." 26 C.F.R. § 301.6651-1(c)(1). It should go without saying that the late-payment penalty imposed here is not merely "akin," but literally identical, to a penalty for a late payment of taxes. As a result, the demanding federal reasonable-cause standard applicable to late payments controls here.

This fact makes it unnecessary to consider Marathon's argument that it could not have failed to pay its taxes because it "filed monthly tax returns and paid the amount of Motor Fuel Tax shown on the returns." Cross-Response 32; *accord id.* at 34 (complaining that Marathon paid "some" fuel tax). That said, this argument was nonsense anyway. As Marathon sees things, the reasonable-cause standard for nonpayments would be inapplicable so long as Marathon submitted a gratuitously incomplete tax return listing only a single transaction with a single purchaser for a single gallon of gas, despite that return omitting literally thousands of separate transactions amounting to millions of gallons of untaxed fuel. Unsurprisingly, Marathon cites not a single case in support of such a bizarre proposition, and arguments unsupported by authority are forfeited. *Bartlow*, 2014 IL 115152, ¶52.

The reason for Marathon's inability to offer any authority in support of this argument is obvious: it is foreclosed by *Boyle*, by the plain language of federal law, and by controlling federal appellate authority, which recognizes that a taxpayer's payment of a separate, discrete amount of taxes owed does not insulate it from failing to pay any amount of another tax. *Trans-Serve, Inc. v. United States*, 521 F.3d 462, 470 (5th Cir. 2008). And while Marathon makes much of how it thinks the facts of *Trans-Serve* differ from this case, Cross-Response 33-34, its arguments on this score rest on its mistaken belief that the more stringent reasonable-cause standard does not apply to late payments, *see id.* at 34 (noting IRS demand and passage of required 21 days). That focus on irrelevancies does nothing to undermine the sole, narrow point for which *Trans-Serve* was offered: to show that mere payment of some taxes does not transform failure to pay another tax into an underpayment subject to the lesser reasonable-cause standard.

Because Marathon failed to collect and remit any taxes on the legion of fuel transactions at issue here, resulting in imposition of a penalty for late payment, "reasonable cause" is governed here by the Internal Revenue Service's demanding standards applicable to penalties for nonpayment and late payment of taxes. As noted above, Marathon does not dispute, and has thus forfeited, any argument that it satisfied that standard, requiring affirmance of the Department's decision not to forgive the late penalties here.

III. Marathon Has Not Satisfied The Reasonable-Cause Standard Applicable To Underpayments.

Even assuming, for sake of argument, that the reasonable-cause standard applicable to underpayments controls here, the Department's decision not to forgive penalties was not against the manifest weight of the evidence even under that more lenient standard. Indeed, Marathon's arguments to the contrary are doomed from the outset – again, the federal regulations make clear that the "most important" factor when evaluating reasonable cause for an underpayment is the "the extent of the taxpayer's effort to assess the taxpayer's proper tax liability," 26 C.F.R. § 1.6664-4(b)(1), but Marathon's brief simply ignores that factor, thus forfeiting any argument that this factor has somehow been satisfied here. *Bartlow*, 2014 IL 115152, ¶52. This forfeiture forecloses any possibility of showing manifest error here, since a taxpayer's failure to show it made any effort to determine its proper tax liability makes it impossible to establish reasonable cause for an underpayment. *Barrett*, 561 F.3d at 1149-50; *Van Scoten*, 439 F.3d at 1260.

Forfeiture aside, the modicum of evidence Marathon offers in support of forgiveness of penalties, Cross-Response 36, only confirms that it made no effort to assess its proper tax liability. For example, Marathon points to testimony that its witness Steiner believed that Marathon had no obligation to collect and remit fuel tax absent "physical movement" of fuel, *id.* (citing C. 12694), but Steiner could not have harbored such a belief had he made even the minimal effort to simply read the Code, which makes clear that the fuel

tax must be collected whenever there is a transfer of "ownership *or* possession" of fuel, Code § 74-471 (emphasis added). Indeed, Steiner's understanding was so fundamentally incompatible with the plain language of the Code that Marathon now expressly *disclaims* any argument that a transfer of mere ownership does not suffice to trigger a distributor's collection obligations. Cross-Response 13-14 (describing contrary position as a "misstatement" of its arguments).[2] Even less helpful to Marathon is Steiner's testimony indicating that he simply assumed that the County did not require collection of fuel tax on the transactions at issue here because other, never-identified jurisdictions supposedly do not require collection on those transactions. *Id.* at 36 (citing C. 12691). Merely assuming that different taxing jurisdictions have identical tax laws shows not effort, but the complete absence of effort, and only confirms that the Department properly declined to find reasonable cause here.

Seeming to recognize that it failed to make even the modest showing necessary to show reasonable cause for an underpayment, Marathon offers a litany of frivolous arguments in an attempt to circumvent this failing. Marathon begins by arguing that federal statutes place on the Internal

[2] Because it is quite clear that this was, in fact, Marathon's argument, *see*, *e.g.*, Marathon Br. 22-23 (arguing that Illinois law defines "ownership" to require "possession," and noting that physical fuel inventories were unchanged), which still finds its way into Marathon's cross-response, Cross-Response 12-13 (arguing that disposal of "actual, physical" product is required), we understand this disclaimer to withdraw Marathon's baseless argument that a physical transfer of possession was required.

Revenue Service "the initial burden of production regarding the accuracy-related penalties," Cross-Response 35, noting that such penalties require, for example, a showing of "negligence or disregard of rules" or a "substantial understatement" of tax liability, *id.* at 34. Marathon then complains that Revenue "did not present any evidence that the penalties are warranted" under these requirements. *Id.* at 35. But in making this argument, Marathon forgets that the Code incorporates only the federal government's reasonable-cause standards for *forgiving* penalties, Code § 34-76, not the federal standards for *imposing* those penalties in the first place. Moreover, Marathon never raised this objection in the administrative or judicial proceedings below, forfeiting this argument as well, since arguments not raised in an administrative proceeding are forfeited on appeal. *Bd. of Educ. v. Bd. of Educ.*, 231 Ill. 2d 184, 205 (2008). That is almost certainly because any objection on that score would have been frivolous, since Marathon could not possibly have disputed that it failed to timely remit taxes on the millions of gallons of fuel transactions at issue here, having not remitted those amounts at all, let alone in a timely manner.

Next, Marathon declares that it reasonably believed that the transactions at issue here were not subject to the fuel tax, claiming that federal law allows forgiveness of underpayment penalties when the application of the law to a transaction is "uncertain" and "not settled." Cross-Response 36-37 (quotation marks omitted). But as already noted above, the

federal reasonable-cause standard is not satisfied by merely offering the taxpayer's "own interpretation" of a law, however "convoluted" the taxpayer considers that law, absent any accompanying evidence of the taxpayer's efforts to determine its proper liability. *Barrett*, 561 F.3d at 1149-50; *Van Scoten*, 439 F.3d at 1260.

This argument also fails for the additional reason that it expressly rests on Marathon's belief that it proved that it engaged in "strictly financial transactions which involve no physical transfer or change in ownership of gasoline or fuel," Cross-Response 36, when the exact opposite is true. As explained previously, Marathon came forward with no representative example of the contracts its own star witness *admitted* were necessary to effect a book transfer. *E.g.*, C. 5078 (explaining that new "contract" to "settle the original contract" is entered because "I have to enter into some sort of agreement or another transaction that allows me to settle the original deal"). And by failing to do so, Marathon made it impossible for the Department to find that any book transfers had taken place, let alone that the transfers that took place involved no transfer of ownership or possession of fuel.[3] And absent competent proof that a book transfer took place, Marathon cannot possibly claim a reasonable belief that the existence of such a transfer

[3] Notably, the result would be the same here even if these separate contracts did not exist. That would only replace one problem (the failure to *produce* books and records demonstrating the absence of a sale) with another (the failure to *maintain* such records in the first place). Either way, the absence of books and records required by the Code would doom Marathon's case in rebuttal.

forgave its obligation to collect and remit the fuel tax on the transactions at issue here.

Nor could Marathon have reasonably believed that the documents it did offer into evidence showed the existence of a transaction that did not trigger its obligation to collect and remit fuel tax, because literally none of those documents sets forth the terms of what Marathon referred to as a book transfer. For example, the internal summary reports – which Marathon now deems its strongest documentary evidence, *see* Cross-Response 2 – only contain the unexplained notation "book transfer," C. 8244-8304. The same is true of Marathon's other documents, some of which occasionally use the term "book transfer," but never provide any explanation what, if anything, is meant by that notation. C. 12914-15, 12917, 12919, 12921.

No reasonable person could possibly believe that such nondescript notations, devoid of any meaningful substantive content, sufficed in rebuttal, given this court's decision in *Du Page Liquor Store, Inc. v. McKibbin*, 383 Ill. 276 (1943). In that case, the taxpayer came forward with a document setting forth various dates, each of which was accompanied by a number, which the taxpayer testified "represented the total sales" for that date. *Id.* at 278. But the taxpayer came forward with no books and records showing "that the figures obtained are the total of a daily record of retail sales." *Id.* Noting that the taxpayer has the burden of coming forward with books and records to support his case in rebuttal, this court concluded that the taxpayer's

"nondescript" documents failed to rebut the *prima facie* case of liability. *Id.* at 278-29.

Marathon's evidence here suffered the same deficiencies as the records in *Du Page Liquor*. While Marathon came forward with documents occasionally containing the phrase "book transfer," C. 12917, 12919, it came forward with absolutely no books and records setting forth the terms of even a *single* book transaction supposedly set forth therein – terms its own star witness admitted *must* be contained in a separate contract. *E.g.*, C. 5078. And while Marathon hoped to fill in that missing content via witness testimony, the taxpayer in *Du Page Liquor* tried that as well, 383 Ill. at 278, and this court made clear that this was not an adequate substitute for the required books and records.

In fact, reasonable reliance on the evidence here was impossible because that evidence is even worse than that at issue in *Du Page Liquor*. The documents Marathon offered as evidence of supposed book transfers not only fail to offer any meaningful indication of what was meant by the notation "book transfer," but contain affirmative indications that a physical transfer of fuel was contemplated. For example:

- the physical deal sheet repeatedly indicates that fuel was to use a "pipeline" as a "Transportation Mode," C. 12914, 12915;
- the book transfer invoice indicates that the "source" of the fuel was "Pasadena, TX," and the "destination" was "Chicago, IL," C. 12919; and

- the corresponding invoice similarly indicated that the fuel was being "sold" and would be shipped to "Chicago, IL," C. 12921.

If anything, those documents indicated that some sort of sale and physical transfer were contemplated, despite the unexplained inclusion of the term "book transfer" elsewhere.[4]

Marathon's failure to show that even a single book transfer took place, let alone that every transaction at issue here involved such a transfer, makes it irrelevant whether Marathon thought it had "reasonably" interpreted the Code never to require it to collect and remit the fuel tax on such transfers. Cross-Response 35-36 (citing *id.* at 12-14). That argument fails anyway, because it rests solely on *Patel v. Comm'r*, 138 T.C. 395 (2012), which is not just wrongly decided, but directly contrary to controlling federal precedent making clear that a taxpayer's mere reliance on its unilateral interpretation of a tax law does not suffice absent any effort to confirm the accuracy of that interpretation, *Barrett*, 561 F.3d at 1149-50; *Van Scoten*, 439 F.3d at 1260.

Reflecting that fact, the reasoning of *Patel* has been expressly repudiated by the Internal Revenue Service specifically because it failed to

[4] In all likelihood, Marathon will claim that all this language regarding delivery and transportation was somehow meaningless, just like it claimed the delivery terminology of its buy/sell agreements was meaningless. C. 12521. But the fact that Marathon believes it can defend against tax liability here only by reflexively decrying as meaningless every term of its own documents that supports the imposition of liability only demonstrates what should be troublingly obvious by this point: that Marathon *has* no reasonable explanation for its actions here.

take into consideration the most important factor to be considered when determining whether to forgive an underpayment penalty: the "taxpayer's efforts to determine the state of the law." *Action on Decision 2013-7*, 2013 AOD LEXIS 1, *4 (I.R.S. February 11, 2013). Indeed, had the taxpayers in *Patel* made even a minimal effort to determine the current state of the applicable law, they would have realized they were underpaying their taxes. Literally *decades* earlier, the statute they relied on had been amended to "disallow" the charitable deduction they claimed *and* the Supreme Court issued a decision that "superseded" the legal standard they applied to that deduction. 138 T.C. at 414. If anything, the mistakes of *Patel* serve as an abject lesson why federal law considers a taxpayer's efforts to determine its liability the most important factor considered when evaluating reasonable cause for an underpayment.

That said, *Patel* is of no help to Marathon here because Marathon's interpretation of the fuel tax is manifestly unreasonable. According to Marathon, "the Motor Fuel Tax is only imposed on the physical transfer of possession or ownership of Motor Fuel for retail sale," Cross-Response 12, but this argument fails on every possible level. Most obviously, it simply misrepresents how the fuel tax works. The tax is not *imposed* at all on transfers of fuel to retailers – the Code makes quite clear that the tax is ultimately "imposed on the retail sale" of fuel. Code § 74-472(a). But the tax is "collected" in *advance* of that retail sale, when fuel is sold to a retail dealer

or an unregistered distributor. *Id.* § 74-472(c). Indeed, the appellate court only recently summarized precisely how the fuel tax works in the context of distributor-retailer transactions:

> While the tax is designed to ultimately be imposed upon the consumer, the distributor collects the tax from the retail dealer upon delivery. The distributor then remits that payment to [Revenue]. The retail dealer is compensated when the fuel is sold to the consumer by including the six-cents-fuel per gallon tax to the fuel cost.

Buchanan Energy (N) LLC v. County of Cook, 2024 IL App (1st) 220056, ¶5 (footnote omitted).

That collection obligation is in no way conditioned on whether a distributor has determined that transferred fuel is "for retail sale." Cross-Response 12. Rather, it is absolute, as made clear by the unambiguous language of the Code stating that the tax "shall be collected by each distributor or supplier who sells . . . fuel" to an unregistered distributor. Code § 74-472(c). Nowhere does that language state that a distributor may decline to collect the fuel tax if it unilaterally determines that a particular transaction is not "for retail sale" somewhere down the chain. The absence of that language is determinative, since it is well settled that courts may not amend the language of a legislative enactment to add qualifications the enacting legislature did not itself see fit to include. *Solich v. George & Anna Portes Cancer Prevention Ctr.*, 158 Ill. 2d 76, 83 (1994). Given that fundamental canon of interpretation, it should go without saying that Marathon's interpretation of the Code, which rests wholly on qualifying

language absent from the Code that cannot be added by a reviewing court, is patently unreasonable.

Equally unreasonable is Marathon's strained attempt to find such qualifying language hidden between the lines of the Code. According to Marathon, collection of the tax upon a sale to an unregistered distributor is contingent on that sale being "for retail sale" because the distributor need only collect the tax "levied" by the Code; because that tax is imposed on a retail sale, Marathon declares, the tax need not be collected unless there will later be a retail sale. Cross-Response 12-13. Marathon also attempts to find support in the inclusion of the word "dispose" in the definition of "sale," which Marathon declares must be read to require "the 'disposal' of actual, physical product." *Id.* at 13. But Marathon made neither of these arguments at any previous point in this litigation; they are thus forfeited. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶23. Finding such a forfeiture is particularly appropriate here, since federal law's heavy emphasis on the taxpayer's *advance* efforts to ascertain its proper tax liability cannot possibly be satisfied by *post hoc* justifications offered by their counsel years later but that never actually formed the basis for the taxpayer's actions.

Forfeiture aside, the reason Marathon did not make these arguments previously is readily apparent – they only indicate how unreasonable its litigation position truly is. While Marathon now claims that it believes that the Code's unambiguous requirement that a distributor "shall" collect and

remit fuel tax upon every "sale" to an unregistered distributor was surreptitiously limited by the language identifying the amount to be collected as the "tax levied," that is simply not how legislative enactments work. As this court has recognized, the plain language of a legislative enactment cannot be altered by "inferences based on language found in scattered ancillary provisions" of that enactment. *People ex rel. Ryan v. Agpro, Inc.*, 214 Ill. 2d 222, 228 (2005). Had the County desired to grant distributors such discretion not to collect the fuel tax, it would have said so explicitly, not by mandating collection of the tax whenever a sale – defined with extraordinary breadth – occurs, only to significantly limit that collection requirement by the use of the phrase "tax levied." Properly understood in context, the language on which Marathon now relies only serves to indicate that the *amount* of tax levied should be collected upon a sale to an unregistered distributor.

Marathon's arguments from the use of the phrase "disposed of" is even less persuasive. Despite insisting that it does *not* dispute that a sale may occur upon a mere transfer of ownership, Cross-Response 13-14, Marathon says the exact opposite less than a page earlier, claiming that the inclusion of this phrase limits the definition of sales to "actual, physical" transfers of product, *id.* at 12-13. In making this argument, Marathon simply assumes, without explanation or citation, that the term "dispose" applies only to physical transfers of goods. That narrow understanding is not shared by the dictionary, which nowhere limits that term to physical transfers, but rather

broadly defines "dispose" as "to settle a matter." WEBSTER'S II NEW COLLEGE DICTIONARY 329 (2001). That definition only confirms that Marathon's supposed *settlements* of its fuel obligations, had they been proven, would still constitute sales for purposes of the Code, triggering Marathon's obligation to collect and remit the tax on the amount settled. And having rested its arguments on a supposed understanding of the term "dispose" that would have been dispelled had Marathon simply picked up a dictionary, Marathon only confirms what by this point should be obvious: it acted without reasonable cause, making waiver of penalties inappropriate here.

CONCLUSION

For the foregoing reasons, and the reasons set forth in appellees' response brief, this court should affirm the judgment of the Department of Administrative Hearings in its entirety.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this response brief conforms to the requirements of Rule 341(a) & (b) and Rule 367(c). The length of this brief, excluding the pages containing or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities and table of contents, 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 4,680 words.

/s/ Jonathon D. Byrer
JONATHON D. BYRER, Attorney

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the accompanying Notice of Filing and the attached brief were served via File & Serve Illinois from 500 Richard J. Daley Center, Chicago, Illinois, before 5:00 p.m. on July 29, 2024.

/s/ Jonathon D. Byrer
JONATHON D. BYRER, Attorney

No. 129562

IN THE
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Plaintiff-Appellant,

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COUNTY OF COOK, COOK COUNTY
DEPARTMENT OF REVENUE, et al.

Defendants-Appellees.

NOTICE OF FILING & PROOF OF SERVICE

The undersigned, being first duly sworn, deposes and states that on July 29, 2024, there was electronically filed and served upon the Clerk of the above court the above Reply Brief in Support of Cross-Relief. On July 29, 2024, service of the brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Jonathon D. Byrer
Jonathon D. Byrer

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Jonathon D. Byrer
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