2017 IL App (1st) 162830-U

FIRST DIVISION
December 29, 2017

No. 1-16-2830

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
	)	
Petitioner-Appellant,	)	Petition for Administrative
	)	Review of the Illinois
v.	)	Independent Tax Tribunal
	)	
THE ILLINOIS INDEPENDENT TAX TRIBUNAL and	)	Case No. 2015-TT-130
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondents-Appellees.	)	

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held*: The tax tribunal's order granting summary judgment in favor of IDOR and denying summary judgment to Waste Management is reversed because the Motor Fuel Tax Law did not apply to compressed natural gas.

¶ 2 Waste Management of Illinois, Inc. calculated and paid taxes under the Motor Fuel Tax Law (Act) (35 ILCS 505/1 *et seq.* (West 2014)) for its use of compressed natural gas (CNG) to operate some of its vehicles. Waste Management later sought a refund of those paid taxes from the Illinois Department of Revenue (IDOR) on the basis that CNG was not taxable under the Act. IDOR denied Waste Management's refund request, and Waste Management filed a petition for

review with the Illinois Independent Tax Tribunal. The tax tribunal affirmed IDOR's decision. Waste Management filed a timely petition for administrative review in this court. For the following reasons, we reverse the decision of the tax tribunal.

¶ 3 BACKGROUND

¶ 4 Waste Management and IDOR stipulated to the following relevant facts before the tax tribunal. Waste Management uses trucks to provide waste collection, transfer, recycling, and disposal services across Illinois. Some of Waste Management's trucks are powered by CNG. Waste Management purchases natural gas from a local gas supplier, which is delivered to Waste Management via pipeline. Between February 2012 and September 2014, Waste Management operated natural gas compression and fueling stations at two locations in Illinois, as well as one retail station at which non-Waste Management vehicles could purchase CNG for refueling. All of the stations used bulk fuel tanks for storage of CNG. Waste Management used compressors to compress the natural gas from 14.7 pounds per square inch (psi), which is the atmospheric pressure at sea level, to 3600 psi for storage as CNG. CNG flows from storage through a dispenser into high-pressure cylinders located on a vehicle. When the vehicle accelerates, CNG passes along a line to the engine where it flows through a regulator, reducing the pressure down from 3600 psi to atmospheric pressure. The natural gas then passes into a gas mixer or fuel injector where it mixes with air and enters the engine's combustion chambers.

¶ 5 The parties further stipulated that prior to compression, natural gas is not a liquid at 14.7 psi, and does not become a liquid at any point when compressed through Waste Management's compression process, or when it is stored or used. CNG is a combustible gas that exists in a gaseous state at 60 degrees Fahrenheit and 14.7 psi. CNG is not the same thing as liquid natural

gas, which is natural gas that has been cooled to negative 260 degrees Fahrenheit and transported at 4 psi.

¶ 6 Between February 2012 and September 2014, Waste Management reported its CNG usage to IDOR on a monthly basis, and self-assessed and paid the motor fuel tax. In August 2014, IDOR amended its motor fuel tax regulations so that, for the first time, IDOR interpreted the Act as expressly applying to the use of CNG. 86 Ill. Admin. Code § 500.200(c) (2014). Waste Management thereafter filed claims seeking a refund of over $200,000 in motor fuel taxes paid on its CNG-powered vehicles for all periods preceding IDOR's adoption of the new regulations. IDOR found that Waste Management was liable for the motor fuel tax for its use of CNG as motor fuel, and denied Waste Management's refund requests.

¶ 7 Waste Management filed a petition for review with the Illinois Independent Tax Tribunal. Count I of Waste Management's petition alleged that CNG is not a taxable "motor fuel" under the Act. Count II alleged that IDOR violated the Illinois constitution by classifying CNG as a taxable motor fuel under the Act.[1] The parties filed cross-motions for summary judgment on Waste Management's petition. Waste Management argued that the Act unambiguously defines "Motor Fuel" as a liquid, and that CNG is not a liquid. Waste Management contended that IDOR's regulations purporting to levy a tax against CNG under the Act "impermissibly extend[s] the applicability of the *** Act instead of administering and executing the law as written." Waste Management argued that even if the Act's definition of motor fuel was somehow ambiguous, any ambiguity must be construed in favor of the taxpayer and against the

[1]Count III of Waste Management's petition alleged that IDOR's denial of Waste Management's claims for refunds violated the Illinois Administrative Procedures Act, and count IV sought attorney fees in connection with count III. The tax tribunal dismissed counts III and IV with prejudice, and Waste Management does not contest those dismissals on appeal.

government. Finally, Waste Management contended that IDOR has no authority to promulgate rules that are inconsistent with the statutes it administers.

¶ 8 IDOR's cross-motion for summary judgment argued that the Act's definition of "Motor Fuel" was ambiguous and susceptible to multiple reasonable interpretations. IDOR argued that the section 1.1 definition of "Motor Fuel" includes, "[a]mong other things *** 'Special Fuel' as defined in Section 1.13 of this Act." IDOR contended that the legislature's use of the phrase "[a]mong other things" indicates that "the definition of 'Motor Fuel' does not include *only* liquids or substances that can be defined as Special Fuel." (Emphasis in original.) IDOR argued that reading the Act to only apply to liquids would render language in various other portions of the Act superfluous, including the Act's section 1.8 definition of "Gallon", and the entirety of section 5, which set forth the responsibilities of licensed distributors of motor fuel.[2] IDOR contended that the Act should be construed to give effect to the purpose of the Act, which is to impose a tax on all motor fuel used in motor vehicles on public highways, (35 ILCS 505/17 (West 2014)), and, because CNG was not expressly excluded from the definition of "Motor Fuel," it should be included in the definition. IDOR further argued that its regulations dating back to 1995, its administrative guidance dating back to the early 1980's, and its regulations under the Retailers' Occupation Tax Act, all treated CNG as taxable under the Act, and were due a high level of deference.

¶ 9 On October 3, 2016, the tax tribunal issued a written order granting summary judgment in favor of IDOR and denying Waste Management's cross-motion for summary judgment. The tax tribunal found that the phrase "[a]mong other things" contained in the section 1.1 definition of "Motor Fuel" meant that "the term '[M]otor [F]uel' *** can clearly be read flexibly and fairly to include motor fuels, liquid and non-liquid, that are used in internal combustion engines ***."

[2]IDOR acknowledged that Waste Management was not a licensed distributor of motor fuel.

The tax tribunal considered the purpose of the Act, the Act's definition of "Gallon," and the Act's imposition of reporting requirements on sellers of motor fuel, including combustible gases, as support for its conclusion. Because the ALJ concluded that CNG was a taxable motor fuel under the Act, it rejected Waste Management's arguments that IDOR's regulations improperly expanded the scope of the Act, and that IDOR's attempt to tax CNG as motor fuel under the Act was an unconstitutional encroachment on the legislature's exclusive power to impose taxes.

¶ 10 On October 26, 2016, Waste Management filed a timely petition for administrative review in this court pursuant to section 1-75 of the Illinois Independent Tribunal Tax Act (35 ILCS 1010/1-75 (West 2014)) and section 3-113 of the Code of Civil Procedure (Code) (735 ILCS 5/3-113 (West 2014)).

¶ 11 After this matter was fully briefed in this court, we allowed Waste Management's "Motion for Leave to Advise Court of Legislative Amendments to the Illinois Motor Fuel Act." Waste Management advised that on June 30, 2017, our legislature enacted Public Act 100-0009 (eff. July 1, 2017), which, without changing the definition of "Motor Fuel," expressly subjects CNG to the motor fuel tax by amending section 2 of the Act.

¶ 12 ANALYSIS

¶ 13 As an initial matter, we note that for purposes of this appeal we consider the Act as it existed prior to the enactment of Public Act 100-0009. To determine whether a statute applies retroactively, we follow the approach set forth by the Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). See *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 37-39 (2001). We first determine whether our legislature prescribed the amended statute's temporal reach. *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 330 (2006). If so, we apply the amendment retroactively. If the legislature did not prescribe the temporal reach of the amended

statute, section 4 of the Statute of Statutes (5 ILCS 70/4 (West 2016)) supplies the default rule that amendments "that are procedural in nature may be applied retroactively, while those that are substantive may not." *Allegis*, 233 Ill. 2d at 331. Here, the General Assembly did not include any express statement regarding the temporal reach of the amendments to the Act, and therefore we apply the default rule from section 4 of the Statute on Statutes. Public Act 100-0009 clearly involves substantive changes in law because it creates, defines, or regulates rights instead of regulating the machinery for carrying on a suit or proceeding. See *GreenPoint Mortgage Funding, Inc. v. Poniewozik*, 2014 IL App (1st) 132864, ¶ 18. The amendments to the Act contained in Public Act 100-0009 are prospective in nature. We therefore consider and apply the provisions of the Act that were in effect at the time of the judgment subject to this appeal.

¶ 14 On appeal, Waste Management argues that CNG is not a "Motor Fuel" as defined by section 1.1 of the Act because it is not a volatile or combustible liquid. Waste Management contends that the specific definition of "Motor Fuel" in section 1.1 is clear, and that the tax tribunal ignored the Act's statutory definition of "Motor Fuel" and expanded the statutory definition to include CNG, a nonliquid. Waste Management further argues that if there was any ambiguity in the definition of "Motor Fuel," that ambiguity should have been resolved in Waste Management's favor.

¶ 15 Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014)). We review a decision to grant summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).We also review questions of statutory

interpretation *de novo*. *Rogers v. Illinois Department of Revenue*, 2017 IL App (1st) 151449, ¶ 30.

¶ 16 When faced with a question of statutory interpretation, our primary goal is to give effect to the intention of the legislature. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 274 (2009). We start with the language of the statute. Where the statutory language is clear and unambiguous, the court must give it effect without resort to other tools of interpretation. *Id.* at 275. "In construing a statute, it is never proper for a court to depart from plain language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent." *Id.* "Where a statute defines its own terms, those terms will be construed in accordance with the statutory definitions. *Holland v. City of Chicago*, 289 Ill. App. 3d 682, 686 (1997).

¶ 17 Illinois imposes a tax "on the privilege of operating motor vehicles upon the public highways *** of this State." 35 ILCS 505/2 (West 2014). The tax is imposed at a certain rate per gallon of motor fuel used in a motor vehicle. 35 ILCS 505/2(a) (West 2014). The Act defines "Motor Fuel" as "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 505/1.1 (West 2014). "Special Fuel" is statutorily defined as:

> "[A]ll 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 505/1.13 (West 2014).

Section 5 of the Act requires licensed motor fuel distributors to make periodic reports to the IDOR 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. *** [T]he types of motor fuel referred to in the preceding paragraph are: *** (B) "all combustible gases, not including liquefied natural gas, 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[.]" 35 ILCS 505/5 (West 2014).

"Fuel" is defined as "all liquids defined as 'Motor Fuel' in Section 1.1 of this Act and aviation fuels and kerosene, but excluding liquified [*sic*] petroleum gases." 35 ILCS 505/1.19 (West 2014).

¶ 18 Also relevant to the parties' arguments on appeal is section 1.8 of the Act, which provides that " 'Gallon' means, in addition to its ordinary meaning, its equivalent in a capacity of measurement of substance in a gaseous state." 35 ILCS 505/1.8 (West 2014). Finally, section 17 of the Tax Act provides, in relevant 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." 35 ILCS 505/17 (West 2014).

¶ 19 We find that the section 1.1 definition of "Motor Fuel" is unambiguous and does not include CNG. We first look to the language of the statute. The legislature makes clear in section 1 of the Act that we are to look at the specific definition provided to determine the meaning of relevant terms within the Act: "For the purpose of this Act the terms set out in the sections following this Section and preceding Section 2 have the meanings ascribed to them in those Sections." 35 ILCS 505/1 (West 2014). The first sentence of the definition of "Motor Fuel" specifically refers to "liquids": " '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." (Emphasis added.) 35 ILCS 505/1.1 (West 2014). The second sentence of the definition states that "Motor Fuel" includes "Special Fuel" as defined in section 1.13: "Among other things, 'Motor Fuel' includes 'Special Fuel' as defined in Section 1.13 of this Act." *Id*. "Special Fuel" is specifically defined to include diesel fuel and "all volatile and inflammable *liquids* capable of being used for the generation of power in an internal combustion engine ***," (emphasis added) (35 ILCS 505/1.13 (West 2014)), and to exclude gasoline and combustible gases. By including the specifically defined term "Special Fuel" in the specific definition of "Motor Fuel," with each specific term limited to "volatile and combustible liquids," the legislature explicitly made clear that it excluded "gasoline" and "all combustible gases" (except liquid natural gas) from being considered a motor fuel subject to the tax.

¶ 20 The legislature's specific inclusion of "Special Fuel as defined in Section 1.13 of this Act" as a "Motor Fuel" shows an intention that the specific statutory definition of "Special Fuel" is to be applied when considering whether a substance is a motor fuel subject to the tax: "[A]ll volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine ***." The statutory definition then makes a specific statement that two

specific products are excluded from the statutory definition of "Special Fuel": " *** 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." 35 ILCS 505/1.13 (West 2014). The combustible gases described in Section 5, example B of the Act describes CNG, as stipulated between the parties. Section 5, example B states: "all combustible gases, not including liquefied natural gas, 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 [sic] petroleum gases used for highway purposes." 35ILCS 505/5 (West 2014). Therefore, the legislature expressly intended to exclude "combustible gases" from the definition of "Special Fuels" and from the definition of a "Motor Fuel" subject to the tax. It is undisputed that CNG is a combustible gas that exists in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute and that CNG does not become liquefied when stored, used or at any point during the Waste Management compression process. A plain reading of the statutory definition of "Motor Fuel" shows that the legislature did not intend to include combustible gases such as CNG in the section 1.1 definition of "Motor Fuel" or as a product subject to a tax under the Act.

¶ 21 IDOR argues that the tax tribunal "correctly determined that the words '[a]mong other things' in the section 1.1 definition of '[M]otor [F]uel' cannot be ignored." IDOR contends that, in order to give effect to the phrase "[a]mong other things," the tax tribunal properly considered the Act as a whole, specifically (1) section 1.8, which defines "Gallon," (2) section 5, and (3) section 17, which states the legislative purpose behind section 2 of Act. IDOR argues that, when read together, the Act "plain[ly] indicates that it is not sufficient for [IDOR] to include only liquids in the universe of taxable motor fuels[.]" IDOR contends that section 1.8 defines "Gallon" to mean, "in addition to its ordinary meaning, its equivalent in a capacity of

measurement of substance in a gaseous state," (35 ILCS 505/1.8 (West 2014)), which suggests that the Act contemplates taxing nonliquids. IDOR then argues that section 5 imposes reporting requirements on motor fuel distributors to report "the number of invoiced gallons of motor fuel of the types specified in this Section," which specifically includes "all combustible gases not including liquefied natural gas, 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" (35 ILCS 505/5 (West 2014)). IDOR argues that section 5 "confirms that gases like CNG are taxable under the [Act]," because section 5 "treats CNG as a '[M]otor [F]uel' pursuant to the 'among other things' provision of section 1.1." IDOR suggests that this makes sense because, "[w]ere that not the case, section 5's language regarding 'all combustible gases' would be meaningless, contrary to statutory interpretation principles." Finally, IDOR contends that the definition of "Motor Fuel" must be read in the context of the legislature's stated purposes set forth in section 17 of the Act.

¶ 22 We cannot accept IDOR's circular argument that the phrase "among other things" in section 1.1 "treats CNG as a '[M]otor [F]uel'" pursuant to section 5." As we discussed, the legislature specifically did *not* incorporate "combustible gases" into the section 1.1 definition of "Motor Fuel" in the Act. The legislature specifically excluded "all combustible gases" (except liquid natural gas) from the definition of "Special Fuel." As written and as intended, the tax is to apply to "Motor Fuel," which is defined to include "Special Fuel," and the tax cannot apply to a combustible gas such as CNG. The legislature did not provide any express statutory guidance as to what the phrase "[a]mong other things" means. While the phrase does suggest that there may be substances that could fall within the statutory definition of "Motor Fuel," it is clear that the category of "Special Fuel" is one of them. We cannot ignore the specific legislative exclusion of

combustible gasses from the category of "Special Fuel." To accept IDOR's argument would produce an absurd result: IDOR's interpretation would result in CNG, a nonliquid combustible gas, being subject to the motor fuel tax because it falls within the category of "among other things" while, at the same time, it is a specifically excluded from the tax as a "Special Fuel" because the legislature specifically excluded combustible gases (like CNG) from being defined as a "Special Fuel." To interpret the phrase "[a]mong other things" in section 1.1 to mean that "combustible gases" are included in the definition of "Motor Fuel," despite being expressly omitted from the definition, would directly contradict the plain language of the statute, and would violate our duty to avoid "depart[ing] from plain language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent." *Exelon Corp.*, 234 Ill. 2d at 274. It is apparent that the legislature went to great lengths to exclude "all combustible gases, not including liquefied natural gas" from the motor fuel tax. In short, had the legislature intended for combustible gases, including CNG, to be subject to the motor fuel tax, it quite simply could have included combustible gases in the section 1.1 definition of "Motor Fuel."

¶ 23 Furthermore, IDOR offers no authority to support its position that section 5's reporting requirements on distributors of combustible gases is rendered meaningless if CNG is not subject to a tax under section 2. Section 5's reporting requirements are a result of Illinois being a member of the International Fuel Tax Agreement. The parties agree that membership in the IFTA does not, absent enabling legislation, cause CNG to be taxable under the Act. Section 5 imposes a duty on certain distributors to report certain activity involving motor fuel, including compressed gases. Under section 5, a distributor must provide IDOR with:

> "an itemized statement of the number of invoiced gallons of motor fuel of the types specified in this Section [including combustible gases] 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 [IDOR] may require." 35 ILCS 505/5 (2016).

Section 5 further provides that, "Only those quantities of combustible gases (example (B) above) which are used or sold by the distributor to be used to propel motor vehicles on the public highways *** shall be subject to return." *Id.* There is nothing in the language of section 5 to suggest a distributor's reporting obligation relative to combustible gases is conditioned or dependent on combustible gases being subject to a tax under section 2 of the Act. In other words, a determination of whether CNG is subject to a tax under section 2 of the Act is unrelated to whether distributors must report transactions involving motor fuel and combustible gases (such as CNG) distributed for use in propelling motor vehicles under section 5 of the Act.

¶ 24 Finally, IDOR's argument that section 17 of the Act supports an expansive reading of the phrase "[a]mong other things," is unpersuasive. Section 17 of the Act provides:

> "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." 35 ILCS 505/17 (West 2014).

Even accepting IDOR's argument that section 17 suggests a broad reading of the Act in favor of taxation, we cannot ignore the legislature's intention as expressed in the section 1.1 definition of "Motor Fuel" which, by its own terms, is limited in scope to volatile and inflammable liquids, and repeated in the section 1.13 definition of "Special Fuel," which is also limited in scope to volatile and inflammable liquids to the exclusion of combustible gases. There is nothing in Section 17 that more specifically defines "Motor Fuel," or that reflects a clear legislative intent to modify the section 1.1 definition of "Motor Fuel" to include CNG. The fact that the legislature defined "Motor Fuel" to apply specifically to volatile and inflammable liquids and to exclude combustible gases like CNG prohibits our expanding the Act beyond the statutory definition of "Motor Fuel." We find that section 17 of the Act does not include CNG within the specific definition of "Motor Fuel" in section 1.1 of the Act.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we find CNG did not fall within the definition of "Motor Fuel" in section 1.1 of the Act, and was therefore not subject to the motor fuel tax under section 2 of the Act during the relevant periods where Waste Management paid the motor fuel tax attributable to its CNG usage. As such, Waste Management was entitled to a refund of the taxes it paid on its CNG-powered vehicles between February 2012 and September 2014. The judgment of the tax tribunal is reversed.

¶ 27 Reversed.