EXHIBIT 82

HEARING NO. 41,860

TO: Mr. David Cowling
Jones, Day, Reavis & Pogue
P.O. Box 660623
Dallas, TX 75266-0623

§ RE: MIDGARD ENERGY COMPANY
§
§ TAXPAYER NO: 1-75-1902570-8
§ AUDIT PERIOD: 1984
§ through 1986
§ AUDIT OFFICE: Dallas West 2I50
§ TYPE OF TAX: Franchise/RDT
§ RESPONSE DATE: **January 14, 2003**

HEARING NO. 41,861

TO: Mr. David Cowling
Jones, Day, Reavis & Pogue
P.O. Box 660623
Dallas, TX 75266-0623

§ RE: MIDGARD ENERGY COMPANY
§
§ TAXPAYER NO: 1-75-1902570-8
§ AUDIT PERIOD: 1987
§ through 1988
§ AUDIT OFFICE: Dallas West 2I50
§ TYPE OF TAX: Franchise/RDT
§ RESPONSE DATE: **January 14, 2003**

HEARING NO. 41,862

TO: Mr. David Cowling
Jones, Day, Reavis & Pogue
P.O. Box 660623
Dallas, TX 75266-0623

§ RE: MIDGARD ENERGY COMPANY
§
§ TAXPAYER NO: 1-75-1902570-8
§ AUDIT PERIOD: 1984
§ through 1986
§ AUDIT OFFICE: Dallas West 2I50
§ TYPE OF TAX: Franchise/RDT
§ RESPONSE DATE: **January 14, 2003**

HEARING NO. 41,863

TO: Mr. David Cowling
Jones, Day, Reavis & Pogue
P.O. Box 660623
Dallas, TX 75266-0623

§ RE: MIDGARD ENERGY COMPANY
§
§ TAXPAYER NO: 1-75-1902570-8
§ AUDIT PERIOD: 1992
§ through 1994
§ AUDIT OFFICE: Dallas West 2I50
§ TYPE OF TAX: Franchise/RDT
§ RESPONSE DATE: **January 14, 2003**

HEARING NO. 41,864

TO: Mr. David Cowling
Jones, Day, Reavis & Pogue
P.O. Box 660623
Dallas, TX 75266-0623

§ RE: MIDGARD ENERGY COMPANY
§
§ TAXPAYER NO: 1-75-1902570-8
§ AUDIT PERIOD: 1995
§ through 1997
§ AUDIT OFFICE: Dallas West 2I50
§ TYPE OF TAX: Franchise/RDT
§ RESPONSE DATE: **January 14, 2003**

POSITION LETTER AND REQUEST FOR DOCUMENTS

This is the Administrative Hearings Section's (AHS) answer to your request for redetermination and statement of grounds of June 13, 2001.

Midguard Energy Company (petitioner) is in the oil and gas business. Bobby Lebkowsky audited petitioner and a Texas Notification of Audit Results (an assessment) was sent on May 14, 2001 for each period, inclusive of tax for the period, penalty and interest to the date of assessment, as follows:

Report Years	Tax[1]	Penalty	Interest[2]
1984-1986	$5,537,816 1,654,276 refund	$553,781	$11,993,033
1987-1988	7,787,977	778,797	11,534,929
1989-1991	6,019,772	601,977	7,645,507
1992-1994	3,970,634 (154,361) payment	397,063	3,215,611
1995-1997	1,573,319	157,331	922,168

The legal issue is the same in all hearings so they will be discussed together.

The audit[3] recharacterized petitioner's intercorporate liabilities to surplus.[4]

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[1] Cents disregarded in all figures.

[2] Interest is calculated to the assessment date.

[3] The audits will be referred to in the singular for convenience.

[4] Other changes were made in the audit of the most recent period but they are not contested.

CONTENTION

Petitioner contends that the recharacterized accounts represented debt rather than equity and that the assessment should be reversed because:

1. The assessment is arbitrary and capricious.
2. The booked liabilities were debt rather than equity.
3. The comptroller is not authorized to and has not promulgated rules limiting the statutory definition of debt.
4. The comptroller cannot reopen previously audited time periods.
5. The assessment violates rights to equal and uniform taxation under the United States and Texas constitutions.

The AHS disagrees.

DISCUSSION

1. The Assessment as being Arbitrary and Capricious

Petitioner contends that the audit conclusion that the intercompany payables[5] were surplus rather than debt was without rational foundation, arbitrary, groundless, baseless and not based petitioner's records.

Here is some background.

Petitioner had an intercompany payable account resulting from a capitalization of the company in 1983 that was supported by a $788,600,000 demand note payable to the parent company.[6] That demand note was succeeded by subsequent notes payable to the parent company.[7] The notes will sometimes be called the note payable. The auditor determined, from the somewhat limited records available for the earlier period, that the intercompany account also included interest accrued on the note that had not been paid.

The audit characterized the note payable, and estimated interest[8] included in the intercompany payable, as surplus. Petitioner implicitly contends that the note payable and the accrued interest were intended to be repaid.

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[5] The AHS will occasionally refer to the contested liabilities as debts or payables for ease of identification and that use does not imply that they are actually debts.

[6] This amount is from petitioner's statement of grounds; the AHS does not have a copy.

[7] The AHS's copies of two of the notes are not signed.

[8] The audit characterized the intercompany payable in FY 1994 as equity and "backed out" interest from the intercompany payable to determine which part of the payable was equity in earlier years. The audit was performed in this manner because of the unavailability of records for the earlier years.

Neither the principal amount of the note nor the interest was repaid until the company group, including petitioner, was spun-off on April 30, 1987. At that time a new note was issued. In 1994 when petitioner wished to borrow money from an outside lender, its parent forgave much of the intercompany note to make petitioner appear financially viable to an outside party.

The AHS contends that neither the note payable nor the other intercompany payables were intended to be repaid and petitioner did not have sufficient capital to support those unsecured obligations. Thus, it was not arbitrary to recharacterize the intercompany payables as capital.

2. Intercompany Payables as Debt or Equity

Petitioner contends that the originating note[9] was "debt" as defined by Section 171.109(a)(3)[10]

In examining the liabilities supported by the note, the crux of our issue revolves around the lack of intent and/or ability to repay. Intent in our case will be established by petitioner's internal documents and/or by the financial statements showing the relatively weak financial condition of the company, lack of net payments on the note or intercompany payable, lack of enforcement action as the company's finances deteriorated and forgiveness of part of the liability.

Surplus includes "unrealized, estimated, or contingent losses or obligations." Section 171.109(a)(1). The AHS asserts that a liability that facially meets the definition of "debt" will not be considered a debt if the parties do not intend to repay that debt or if the debt is otherwise a sham. That position is supported by both the Tax Code's inclusion of "contingent ...obligations" in surplus and case law that recognizes that "debts" are not treated as such in certain circumstances.

Could, as an extreme hypothetical example, a corporation with $1,000 equity support a $100 million note to its parent company? The comptroller's answer is that it could not.

The seminal hearing on this issue is Comptroller Decision No. 10,576 (1980) which found federal income tax cases to be of value in analyzing the issue with the three broad areas of investigation to be: (1) the formal rights and remedies of the parties, (2) factors bearing on intention, and (3) factors bearing on economic reality.

Before examining those areas of interest the AHS will digress to recognize that companies may lawfully plan their affairs to reduce their taxes. The question in our case is whether petitioner's plan to minimize its Texas franchise taxes, by reducing its proportion of equity compared to debt, complied with the minimum capital requirements to support the company on a stand-alone basis at its inception and, further, in later years as the amount of the intercompany obligations increased and petitioner's financial condition weakened.

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[9] "Note" means singular or plural, as applicable.

[10] All references to Section are to Tex. Tax Code Ann. (West 1992 and Pocket).

Petitioner created a demand note when it was originally capitalized and some succeeding notes. The AHS contends the note is more analogous to an unsecured small personal loan at a bank rather than $788.6 million loan from an uninterested lender. The lack of protection given the lender gives support to the sham nature of the note.

Petitioner initially determined that a debt/equity ratio of 3:1 was sufficient when it was capitalized as part of a group reorganization in 1983 so petitioner was capitalized at approximately that ratio with an intercompany demand note for $788.6 million in debt capital and about $262.8 million in equity capital. Petitioner had continuing losses and its net capital account became negative in fiscal 1986 thereby increasing its debt/equity ratio to an infinite amount. The notes required petitioner to pay interest. Petitioner did not pay the interest but apparently[11] included it as a payable in an intercompany payable account.

The AHS does not have petitioner's balance sheets so the AHS does not have sufficient information to determine petitioner's exact equity or liabilities under GAAP but petitioner's general capital position may be inferred from the information available. In short, while petitioner's intercompany liabilities were increasing, its equity was generally decreasing.

The AHS concludes that the intercompany debt was equity.

3. Definition of debt.

Petitioner contends that the definition of debt given in Section 171.109(a)(3) controls the contested payables in our case because both payables are payable on demand or within an ascertainable time, are legal obligations, and are amount specific.

The AHS agrees that the note facially meets the statutory definition of debt but contends that the note is a sham transaction not in accord with petitioner's intent or actions or in accord with financial reality that would be accepted by a reasonable third party lender.

The AHS does not seek to change the meaning of debt as defined by the Tax Code; it seeks instead to enforce that definition in this case where petitioner has not repaid the unsecured note and did not have the financial ability to obtain similar financing elsewhere.

4. Reopening of Previously Audited Time Periods.

Petitioner contends that the comptroller may not open previously audited periods because of res judicata and "law of the case."[12]

The AHS is not aware of any legal prohibition against the reopening of previously audited periods and petitioner has cited none beyond its reference to res judicata or law of the case.

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[11] The auditor was not given a breakdown of the intercompany payable or other information sufficient to see the accrued interest amount in the general intercompany payable account.

[12] This contention, presumably, applies only to periods in which there was a prior audit.

The issue contested in this proceeding was not contested in prior administrative proceedings or other formal proceedings so res judicata or administrative judicata would not apply.

The law of the case doctrine is defined as that principle under which questions of law decided on appeal to a court of last resort will govern the case throughout its subsequent stages. Our proceeding is not a "subsequent stage" of a previous administrative proceeding or, as a necessary requisite for law of the case to apply, a judicial proceeding. So law of the case does not apply.

It is not uncommon for companies to reopen previously audited periods and acceptance of petitioner's interpretation would preclude either party from reopening a closed audit. Neither prohibition is required by res judicata or law of the case.

The current assessment would increase the tax payable for each period more than 25% so limitations is not a bar.

5. Available Records.

Petitioner contends that it had adequate records for the current audit as demonstrated by prior audits of the same period.

The AHS contends that adequate records were not presented for the present audit period so the auditor was required to make certain assumptions and projections based on the records given to him.

6. Equal and Uniform Taxation under the United States and Texas Constitutions

Petitioner contends that the audits unconstitutionally discriminate against petitioner because it was previously audited and not assessed for the currently contested transactions and the comptroller has not done so with other companies.

The AHS disagrees. The current audit inquiry turned up additional evidence not given to the prior auditor.

CONCLUSION

The AHS would not amend the assessment.

REQUEST FOR DOCUMENTS

The AHS requests a copy of the following[13]:

1. The financial spreadsheets for petitioner, and the corporate group of which it is a part, that shows the financial condition of petitioner and each member of the corporate group. Both the balance sheet and the income statements are included in this request. Audited F/S

2. Trial balance sheets.

3. Internal records, including memoranda, notes, Board of Director minutes and all other internal documents and records discussing petitioner's deliberations and/or decision making to enter into the contested intercompany obligations.

4. Signed copies of the following notes.

   A. The original intercompany note in 1983 for about $788.6 million.

   B. The intercompany note in 1987 for about $975 million.

   C. The 1995 note for about $250 million.

   D. All other intercompany notes.

5. All letters, memoranda and other documents given to the Internal Revenue Service of the United States concerning any IRS examination or audit relating in any manner to any of the contested notes. And, all letters, reports and other documents given to petitioner by the IRS in connection with any IRS examination or audit.

6. All letters, memoranda and other documents to or from outside parties, including accounting firms, and other tax and other financial advisors, but excluding law firms, concerning petitioner's deliberations, discussions and recommendations to enter into the original contested note in 1983.

7. All letters, memorandum and other documents to or from outside parties, including accounting firms, and other tax and other financial advisors, but excluding law firms, concerning petitioner's deliberations, discussions and recommendations to refinance any of the other contested notes.

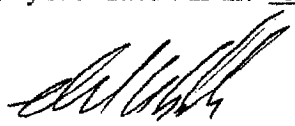
[13] All requests are for the fiscal years of 1984 through 1996 unless specifically limited otherwise.

PROCEDURE

Please use the attached form to respond to this position letter. If you agree with the position letter, you should check option one. If you disagree and wish to proceed further, you should request a hearing by checking either option two or three. The Comptroller's Rules of Practice and Procedure require you to file this form within fifteen days. If you do not respond, I will file a motion to dismiss the case and have the tax calculated in accordance with the position letter.

If you have any questions about my position or any of the hearings procedures, you may call me at 1-800-531-5441, extension 3-4085, or at 512/463-4085 and my e-mail is bob.frederick@cpa.state.tx.us. My fax number is 512/463-4617.

Respectfully submitted this the 30th day of December 2002.



Robert L. Frederick
Assistant General Counsel
Administrative Hearings
Texas State Bar No. 07412500
PO Box 13528
Austin, Texas 78711-3528
Telephone: (512) 463-4085
Fax: (512) 463-4617

RLF/ea

Attachment