

MF 07-2

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

ABC EXPRESS, INC.,  
Taxpayer

Docket No. 06-ST-0000

Denial of Claim for Refund  
for Motor Fuel Tax

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Mercer Turner, Law Office of Mercer Turner, for ABC Express, Inc.; Mr. Kent Steinkamp, Special Assistant Attorney General, for the Illinois Department of Revenue

**Synopsis:**

The Illinois Department of Revenue (hereinafter referred to as the "Department"), issued two denials of refund to ABC Express, Inc. on February 10, 2006. The reason for the denials was that Public Act 92-0030 modifies the Motor Fuel Tax Law and the equipment in which the taxpayer used undyed diesel fuel no longer qualifies for a refund. The taxpayer timely protested the denials. The hearing was held pursuant to that request. The issue in this matter is whether the vehicles that the undyed diesel fuel was used in qualify for exemption under the statute. It is recommended that that the matter be resolved in favor of the taxpayer. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The Department's *prima facie* case was established by admission into evidence of Department's Exhibits 1 and 2. (Tr. p. 6)

2. On February 1, 2006, taxpayer filed an RMFT-11-A Illinois Motor Fuel Tax Refund Claim for the period of January 2004 through December 2004 in the amount of \$6,278.43. On February 10, 2006 the Department denied the claim for refund stating that effective July 1, 2001, Public Act 92-0030 modified the Motor Fuel Tax Law and as a result the equipment that the taxpayer used the undyed diesel fuel in no longer qualifies for a refund. (Dept. Ex. No. 1)

3. On February 1, 2006, taxpayer filed an RMFT-11-A Illinois Motor Fuel Tax Refund Claim for the period of January 2005 through December 2005 in the amount of \$3,817.11. On February 10, 2006 the Department denied the claim for refund stating that effective July 1, 2001, Public Act 92-0030 modified the Motor Fuel Tax Law and as a result the equipment that the taxpayer used the undyed diesel fuel in no longer qualifies for a refund. (Dept. Ex. No. 2)

4. The equipment using the undyed diesel fuel in 2004 were 10 Ottawa cabs weighing 64,000 pounds apiece. Each cab has two axels. (Dept. Ex. No. 1; Taxpayer's Ex. Nos. 2, 3)

5. The equipment using the undyed diesel fuel in 2005 were 8 Ottawa cabs weighing 64,000 pounds apiece and a 1992 - 300 horsepower Ford tractor. (Dept. Ex. No. 2; Taxpayer's Ex. Nos. 2, 3)

6. The cabs have a rear axle, a forward axel, a cab, mirrors, an exhaust stack, lights and turn signals. Each cab contains a hydraulic fifth wheel for the ability to couple a trailer. They are commercially licensed as commercial motor vehicles. (Taxpayer's Ex. Nos. 3, 4; Tr.

pp. 28-31)

7. Taxpayer is a logistics and transport company. It is a niche market trucking company that caters primarily to the automotive industry. Taxpayer hauls parts of cars into car plants or distribution facilities for the plant to reroute them to other plants. Taxpayer also hauls car parts directly into assembly plants for final assembly. (Tr. p. 9)

8. Taxpayer operates the yard at an automobile manufacturing plant in Anywhere, Illinois. Fully licensed road tractors bring in parts for automobiles on trailers. Taxpayer's cabs move the trailers in and out of dock doors when the plant needs the parts. (Tr. pp. 17-18)

9. One Avenue borders the yard at Car Manufacturer on the east and Car Manufacturer Avenue borders it on the south. Taxpayer's cabs must cross Car Manufacturer to move containers and trailers around in a large parking lot on the other side of Car Manufacturer. This is done in order to sort reusable containers and "cross-docking" freight that will be used in the plant. (Taxpayer's Ex. Nos. 1, 2; Tr. pp. 17-18)

10. The cabs<sup>1</sup> at issue are duly licensed in the State of Illinois for highway usage. When they cross Car Manufacturer and when they are taken off the premises to be serviced are highway uses. The taxpayer has not requested a refund for those uses. The cabs also travel the public roads to "cottage industries."<sup>2</sup> The taxpayer has not requested a refund for the fuel used for those trips either. (Tr. pp. 13-14, 16-23)

11. The Department does not question the veracity of the amount of fuel used for off-highway purposes. (Tr. pp. 23, 30)

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<sup>1</sup> The cabs were referred to by the taxpayer as tractors, spotters and yard hostlers at the hearing.

<sup>2</sup> Some sub-suppliers locate their facilities near the auto plant. They are referred to as cottage industries. It is part of taxpayer's contract with Mitsubishi to leave the grounds and pick up the supplies of the cottage industries. (Tr. pp. 19-20)

**CONCLUSIONS OF LAW:**

The Motor Fuel Tax Law (35 ILCS 505/1 *et seq.*, hereinafter referred to as the “Act”) was amended by Public Act 92-0030 effective July 1, 2001. The relevant provision states at Section 13: *Refund of tax paid:*

Any person other than a distributor or supplier who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid.

\* \* \*

No claim based upon the use of undyed diesel fuel shall be allowed except for undyed diesel fuel used by a commercial vehicle, as the term is defined in Section 1-111.8 of the Illinois Vehicle Code, for any purpose other than operating the commercial vehicle upon the public highways and unlicensed commercial vehicles operating on private property. (35 ILCS 505/13)

Section 1-111.8 of the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*) provides the following definition of a commercial motor vehicle:

Any vehicle operated for the transportation of persons or property in the furtherance of any commercial or industrial enterprise, For-Hire or Not-For-Hire, but not including a commuter van, a vehicle used in a ridesharing arrangement when being used for that purpose, or a recreational vehicle not being used commercially. (625 ILCS 5/1-111.8)

Section 21 of the Act incorporates by reference section 5 of the Retailers’ Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department’s determination of the amount owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1<sup>st</sup> Dist.

1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2<sup>nd</sup> Dist. 1978)

The Department's *prima facie* case was established when the Department's certified copies of the denials for refund were admitted into evidence. (Tr. p. 6)

The Department does not dispute the amount of refund that the taxpayer is requesting. It does dispute the issue of whether these vehicles are commercial motor vehicles as envisioned by the statute. The undyed diesel fuel for which the taxpayer requests the refund was used in vehicles that attach to semi-trailers that transport property in furtherance of a commercial enterprise. The cabs at issue are licensed by the State of Illinois as commercial motor vehicles. The cabs operate both off and on the highway. I conclude they qualify as commercial motor vehicles under the statute.

For the foregoing reasons, it is recommended that the requested refunds be granted.

Barbara S. Rowe  
Administrative Law Judge  
January 4, 2007