

MF 09-2

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

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, LTD.. /JOHN DOE,

Taxpayer.

Docket No.: 08-ST-0000

Account No.: 00-00000

NTL No.: 00-000000 0

Julie-April Montgomery  
Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Gary Stutland, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Smith Jones, appearing *pro se*, for ABC, Ltd./John Doe.

**Synopsis:**

On June 13, 2008, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to ABC, Ltd.. /John Doe for motor fuel use tax. John Doe is an employee of ABC, Ltd.. ("Taxpayer"). The NTL alleged that on June 5, 2008 Taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying decals as required under section 13a.4 of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*) or without a valid single trip permit pursuant to section 13a.5 of the Act. Taxpayer timely protested the NTL. A hearing was held, by telephone, at the Taxpayer's request, during which Taxpayer presented the testimony of its driver, John Doe, but no documents on its behalf. Following the submission of all evidence and a review of the record, it is recommended that this matter

be resolved in favor of the Department. In support thereof, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. On June 5, 2008, John Doe was observed, by Department Investigator Hasquin, driving a white pickup truck that was “hauling a 40 f[oo]t trailer...exiting Illinois into Iowa on R[ou]te 30.” Dept. Gr. Ex. No. 1 (“Motor Fuel Use Tax Violation Report”); Tr. pp. 13.
2. On June 5, 2008, Investigator Hasquin stopped Doe on the shoulder of Route 30 at the Illinois-Iowa border where Hasquin was positioned, with other Department investigators, between the Iowa border and the last Illinois exit available before entry into Iowa. Tr. pp. 12-13, 16, 21, 25, 42-43.
3. Hasquin requested and received from Doe the Illinois registrations for the truck and trailer that contained merchandise to be delivered to a customer located in Tipton, Iowa on behalf of ABC, Ltd., owner of the vehicles. These registrations reflected the registered weight of the truck to be 12,000 pounds and its accompanying trailer to be 16,000 pounds for a combined weight of 28,000 pounds. Dept. Gr. Ex. No. 1; Tr. pp. 13-16, 24, 36, 50-51.
4. Doe had no valid Illinois single trip permit and neither the truck nor trailer displayed an International Fuel Tax Agreement (“IFTA”) license/decal. Dept. Gr. Ex. No. 1 (“Notice of Tax Liability for Motor Fuel Use Tax,” “Motor Fuel Use Tax Violation Report” and “Written Warning”); Tr. pp. 16-17, 53, 55-56.
5. Doe was given a written warning for driving the truck and trailer without a valid Motor Fuel Use Tax license or decals. Dept. Gr. Ex. No. 1; Tr. pp. 18, 21.

6. On June 13, 2008, the Department assessed a penalty against Taxpayer in the amount of \$1,000. The Notice of Tax Liability for Motor Fuel Use Tax, or NTL, was admitted into evidence under the certification of the Director of the Department. Dept. Gr. Ex. No. 1; Tr. pp. 7-8, 10.

**Conclusions of Law:**

The NTL issued by the Department alleges that Taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license or decal pursuant to section 13a.4 of the Act, which provides, in part, as follows:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. 35 ILCS 505/13a.4.

Section 13a.5 provides an exception for motor carriers holding a single trip permit. 35 ILCS 505/13a.5. A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. 35 ILCS 505/1.17. The Act defines "commercial motor vehicle" as follows:

[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds \*\*\*, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds \*\*\*, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. 35 ILCS 505/1.16.

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. 35 ILCS 505/13a.4. Section 13a.6 (b) of the Act states that if a commercial motor vehicle is found to be operating in Illinois without a valid motor fuel use tax license and without properly displayed decals or without a valid single trip

permit, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty for the first offense. 35 ILCS 505/13a.6 (b). The person required to obtain the license or permit is the owner of the vehicle. See 86 Ill. Admin. Code, Sec. 500.305.

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 of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to 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 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978).

In addition, “when a taxpayer claims that he is exempt from a particular tax ... the burden of proof is on the taxpayer.” Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296 (1<sup>st</sup> Dist. 1981) (*citing* Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305 (1976); Bodine Electric Co. v. Allphin, 81 Ill. 2d 502 (1980)). To prove its case, a taxpayer must present more than just testimony that denies the Department's determination. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4<sup>th</sup> Dist. 1990). Rather, the taxpayer must present sufficient documentary evidence to support its claim. *Id.*

It is well established in Illinois that there is a presumption against exemption and therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of an exemption “resolved in favor of taxation.” Van's Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). The taxpayer bears the burden of

proving by “clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2<sup>nd</sup> Dist. 1991).

In the present case, the Department’s *prima facie* case was established when the Department’s certified copy of the NTL was admitted into evidence. Once the NTL was admitted into evidence, the Department’s position is legally presumed to be correct.

In response, Taxpayer presented no documentary evidence. However, Taxpayer posits two arguments. The first argument is it was exempt because its business is “in Illinois and primarily 90 percent of [its] customers are in Illinois, and [it] do[es] have a few [customers] on the outlying areas (tr. p. 28) like Wisconsin and Indiana. Tr. p. 55. The record is clear that the vehicles cited on June 5, 2008 were not operated by the Illinois or federal governments nor was evidence, testimonial or documentary, presented to show the truck and trailer were operated solely in Illinois and all motor fuel utilized was, in fact, purchased in Illinois. While the Department’s exhibit does include Taxpayer’s protest letter which asserted that only the trailer but not the truck “does not cross state line [and a]ll fuel is purchased in Illinois” (Dept. Gr. Ex. No. 1 Taxpayer’s June 19, 2008 letter), no testimony or documents were offered to support this assertion. Hence, Taxpayer’s exemption argument must fail for a lack of evidence beyond mere assertion and argument.

Taxpayer’s second argument is that no violation of the Act can exist because the truck and trailer were stopped and cited in Illinois before any entry into Iowa, and while there was intent to deliver goods to Iowa such did not happen because the driver returned to ABC after receipt of the citation. Tr. pp. 37, 38, 52. No documentary evidence was presented in support of this argument, only the driver’s testimony. In response, however, the Department presented evidence, documentary and testimonial, that: 1) the truck and trailer were “observed exiting Illinois into Iowa;” 2) no Illinois exit existed which could be used to remain in Illinois after issuance of the citation, only an Iowa exit; and 3)

should the driver have tried to remain in Illinois, and return to ABC, he would have been stopped again by other Department investigators on the road opposite Hasquin's position and Hasquin would have been contacted (but no record of such contact was presented). Tr. pp. 16, 21, 43-44.

Taxpayer failed to offer documents that supported its exemption argument or rebutted the Department's *prima facie* case. This lack of documentary evidence makes clear Taxpayer is not entitled to an exemption and is liable for the penalty.

**WHEREFORE**, for the reasons stated above, it is recommended that the \$1,000 penalty be affirmed solely against ABC, Ltd.. and be canceled as to John Doe.

February 17, 2009

Julie-April Montgomery  
Administrative Law Judge