

MF 11-03
Tax Type: Motor Fuel
Issue: Denial Of Registration Number

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN DOE

Taxpayer

Docket # 10-ST-0273
Letter ID: L1440908480
Registration Denial

RECOMMENDATION FOR DISPOSITION

Appearances: George Foster, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*

Synopsis:

The Department of Revenue (“Department”) issued to John Doe (“taxpayer”) a Taxpayer Notification Registration Denial, which stated that his registration for motor fuel use tax was denied because the Department’s records indicate that he has an outstanding liability. The taxpayer timely protested the Denial, and an evidentiary hearing was held.¹ After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

¹ Administrative Law Judge Kenneth Galvin presided over the hearing. Witness credibility is not an issue in this matter.

1. On June 30, 2010, the Department issued a Taxpayer Notification Registration Denial (“Denial”) to the taxpayer for his motor fuel use tax registration. The Denial was admitted into evidence under the Director’s Certificate of Records. (Dept. Ex. #1)
2. The Denial indicates that the taxpayer owes \$524.15 for his individual income taxes and \$4,263.78 for withholding income taxes for a corporation, ABC Business (“corporation”). (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Section 2505-380 of Article 2505 of the Civil Administrative Code of Illinois provides as follows:

Revocation of or refusal to issue a certificate of registration, permit, or license. The Department has the power to refuse to issue or, after notice and an opportunity for a hearing, to revoke a certificate of registration, permit, or license issued or authorized to be issued by the Department if the applicant for or holder of the certificate of registration, permit, or license fails to file a return, or to pay the tax, fee, penalty, or interest shown in a filed return, or to pay any final assessment of tax, fee, penalty, or interest, as required by the tax or fee Act under which the certificate of registration, permit, or license is required or any other tax or fee Act administered by the Department.... 20 ILCS 2505/2505-380.

The Department’s regulation concerning motor fuel use tax licenses contains a similar provision:

Neither a license or decals shall be issued to any person who fails to file a return, or to pay the tax, penalty or interest for a filed return, or to pay any final assessment of tax, penalty or interest, as required by the Law, or as required by any other tax Act administered by the Department. 86 Ill. Admin. Code §500.305(c).

Section 21 of the Motor Fuel Tax Law (35 ILCS 505/1 *et seq.*) incorporates by reference sections 4 and 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provide that the Department's determination is *prima facie* correct. 35 ILCS 505/21;

120/4, 5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove that the Department's determination is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991); A.R. Barnes & Company v. Department of Revenue, 173 Ill. App. 3d 826, 832 (1st Dist. 1988); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978). To prove his case, a taxpayer must present more than his testimony denying the Department's assessment. *Id.*; Barnes, at 835; Lakeland, at 1040. The taxpayer must present sufficient documentary evidence to support his claim. *Id.*

The Department's *prima facie* case was established when the certified copy of the Denial was admitted into evidence. In response, the taxpayer contends that the individual income tax liability shown on the Denial has been paid. With respect to the liability owed by the corporation, the taxpayer states that the corporation was a truck repair shop, and the taxpayer worked as the foreman there. The taxpayer claims that he only took care of trucks, did not have access to the checkbook, did not have signature authority for the account, and was not in charge of the payroll. He said he was not responsible for paying the withholding taxes. The taxpayer also said that he had one partner who ran the business, and after the taxpayer was alerted to the partner's mishandling of the business, the taxpayer left in 2000. The corporation was dissolved in 2001.

The taxpayer contends that he only has his testimony to rebut the Department's findings because no physical evidence remains from the business. The taxpayer did not have an amicable parting with his partner, and he was unable to obtain financial records when he left. All of the taxpayer's records were discarded after he closed out the last of his own personal matters regarding the corporation.

In addition, the taxpayer argues that the Denial that was sent on June 30, 2010 was his first notice of the corporation's outstanding liability, and the liability is over 10 years old. Since the corporation was dissolved, the taxpayer has received two registrations from the Department for motor fuel use tax, and the Department did not consider the outstanding liability to be a problem at that time. The taxpayer contends that if he was notified of the liability at the time he received his first motor fuel use tax registration, he would have addressed the problem then. The taxpayer also asks why the statute of limitations does not apply to this liability.

Unfortunately, without documents supporting the taxpayer's arguments, the Department's decision must be upheld. As indicated in the previously cited sections, the Department may refuse to issue a registration or license if the taxpayer fails to file a return or pay a tax, fee, penalty, or interest shown in a return required to be filed under any Act administered by the Department. Although the taxpayer claims that he has paid the outstanding liability for his personal income tax, the record does not include documentation to support this finding.

The record also does not include any documents to support the taxpayer's arguments concerning the corporation's liability. Although the taxpayer has asked why the statute of limitations does not apply, it is not possible to determine whether it applies without additional information. The taxpayer may have obtained from the Department, through an interrogatory or a request for admission, verification that the Department never issued a Notice of Deficiency regarding the outstanding withholding tax liability. Without knowing whether a Notice of Deficiency was issued, it is not possible to determine whether the statute of limitations would bar collection of the liability.

Although the taxpayer previously received two motor fuel use tax registrations, the Department may still deny the registration based on any outstanding liability. Without documentation supporting the taxpayer's remaining contentions, it cannot be found that the taxpayer has met his burden of proof to overcome the Department's *prima facie* case.

Recommendation:

For the foregoing reasons, it is recommended that the denial of the motor fuel use tax registration be upheld.

Linda Olivero
Administrative Law Judge

Enter: September 20, 2011