

MF 12-04

Tax Type: Motor Fuel Use Tax

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

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN DOE d/b/a ABC BUSINESS,
Taxpayer

Docket # XXXX
Acct ID: XXXX
Letter ID: XXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Marc Muchin, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE, *pro se*

Synopsis:

On October 28, 2010, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to JOHN DOE d/b/a ABC Business ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without appropriate credentials (*i.e.*, valid motor fuel use tax license, Illinois single-trip permit, IFTA temporary permit, or required decals) pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The taxpayer timely protested the NTL, and a hearing was held.¹ During the hearing, the taxpayer argued that he was not aware of the credential requirements. He believed that with farm plates on his vehicle, as long as he was traveling within 30 miles of his home he

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

did not need to have any additional permits or licenses. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On October 14, 2010, the taxpayer's employee was operating a 3 axle tractor that was pulling a grain trailer in Illinois without a valid motor fuel use tax license, Illinois single-trip permit, IFTA temporary permit, or required decals. (Taxpayer's Group Ex. #1, p. 8).
2. On October 28, 2010, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have a valid license, permit, or decals while operating the vehicle on October 14, 2010. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license, Illinois single-trip permit, IFTA temporary permit, or required decals pursuant to section 13a.4 of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*), 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 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, 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. (35 ILCS 505/13a.6(b)).

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 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 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the taxpayer argued that he was not aware of the credential requirements. He purchased two semi trucks in September of 2010 from a dealership in Anystate, and the taxpayer asked the dealer what plates and registration would be needed. He claims he was told that with farm plates on his vehicle, as long as he was traveling within 30 miles of his home he did not need to have any additional permits or licenses. The taxpayer hauls grain between the states of Illinois, Iowa and Anystate. (Tr. p. 8) The taxpayer presented documents showing that he obtained IFTA licenses for his vehicles for the years 2011 and 2012.

Unfortunately for the taxpayer, the definition of “commercial motor vehicle” in section 1.16 of the Act does not include an exception for farm vehicles, and it does not matter that the taxpayer was hauling grain within 30 miles of his home. The definition includes a vehicle that is

used, designed or maintained for the transportation of persons or property and has 3 or more axles, regardless of weight. Although the statute includes an exception for vehicles that are operated solely within this State for which all motor fuel is purchased within this State, the taxpayer admitted that his vehicles travel between 3 different states. In addition, the statute does not include a provision that allows for the abatement of the penalty due to reasonable cause. Therefore, the fact that the taxpayer received the wrong information concerning the motor fuel license requirements does not allow for the abatement of the penalty.

For the foregoing reasons, it is recommended that the Notice of Tax Liability be affirmed in its entirety.

Linda Olivero
Administrative Law Judge

Enter: July 30, 2012