

MF 12-05

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
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC BUSINESS,
Taxpayer**

**No. XXXX
Account ID XXXX
Letter ID XXXX
Period 3/2/11**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General John Alshuler on behalf of the Illinois Department of Revenue; John Doe, *pro se*, on behalf of ABC BUSINESS

Synopsis:

On March 2, 2011, the Illinois Department of Revenue ("Department") issued a Notice of Tax Liability for Illinois Motor Fuel Use Tax ("Notice of Tax Liability") to ABC BUSINESS ("taxpayer") for "operating a commercial motor vehicle in Illinois without appropriate credentials (*i.e.*, IFTA license, Illinois Single-Trip Permit, 30-day IFTA temporary permit, required decals)". The taxpayer timely protested the Notice of Tax Liability and a hearing was held. After reviewing the record of the hearing proceedings and documentary evidence submitted by the parties, it is recommended that

the decision of the Director of the Department of Revenue (“Director”) be that the taxpayer was liable for the tax imposed by the Notice of Tax Liability.

Findings of Fact:

1. On March 2, 2011, the taxpayer was cited for operating a commercial motor vehicle in Illinois without properly displaying required decals, or without a valid Illinois Single-Trip permit or a valid 30-day International Fuel Tax Agreement temporary permit. Department Ex. 1.
2. On March 29, 2011, the Department issued to the taxpayer a Notice of Tax Liability for Illinois Motor Fuel Use Tax, Letter ID number XXXX for motor fuel use tax showing a penalty due of \$1000 for failure to display required decals while operating a vehicle in Illinois on March 2, 2011. *Id.* The Notice of Tax Liability was admitted into evidence under certification of the Director . *Id.*
3. The taxpayer admits that he was operating a motor vehicle in Illinois on March 2, 2011 without the proper decals. Tr. pp. 10, 11.
4. The taxpayer has its principal office in Anywhere, Anystate. Department Ex. 1.
5. The taxpayer was aware of the need for stickers and decals, but contends that it was unable to obtain them in the state where its principal office is located, Anystate, from the Anystate Department of Revenue, due to the extenuating circumstances beyond the taxpayer's control. Tr. pp. 5,10,11.

Conclusions of Law:

The Notice of Tax Liability issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without properly displaying required decals, and without either a valid Illinois Single-Trip Permit or 30-day

International Fuel Tax Agreement temporary permit. Department Ex. 1. Section 13 a.4 of the Motor Fuel Tax Act (the "Act") (35 ILCS 505/1 *et seq.*) 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 for an exception for motor carriers holding a Single-Trip Permit.
35 ILCS 505/13a.5.

Section 13a.4 of the Act also provides that the required motor fuel tax decals shall be displayed 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 properly displayed decals or without a valid Single-Trip permit, then the person required to obtain decals or a permit under sections 13a.4 or 13a.5 of the Act must pay a minimum of \$1000 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 amount of tax due. 35 ILCS 505/21. The burden shifts to the taxpayer to prove, by sufficient documentary evidence, that the assessment is incorrect once the Department has established its *prima facie* case, Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991).

In this case, Department's *prima facie* case was established when the Department's certified copy of the Notice of Tax Liability was admitted into evidence. In

response, the taxpayer admitted that he did not possess or display the required IFTA decals on its vehicle on the day in question, but stated that this failure was due to extenuating circumstances as outlined below:

JOHN DOE: For years ABC BUSINESS has renewed their IFTA stickers online through the Anystate Department of Revenue, I believe. They were following the same procedures they had for years. Due to the delays created by the restructuring of the Anystate Department of Revenue and their process for renewing IFTA stickers, it created delays out of our control.

While I can sympathize with the taxpayer's situation here and the fact that the taxpayer made an unsuccessful attempt to obtain the required decals in its home state, unfortunately there is no exception in the Act that provides for liability mitigation or waiver of the fine at issue based upon extenuating circumstances whether or not they are within the taxpayer's control. The Act provides that no motor carrier shall operate without first securing appropriate documentation from the Department or securing appropriate documentation issued under the International Fuel Tax Agreement by any member jurisdiction. Nothing in the Act allows for an abatement of the penalty when a party fails to first obtain and display such documentation before operating a motor vehicle in this state. Moreover, as noted above, in order to rebut the Department's *prima facie* case, the taxpayer was required to offer documentary evidence supporting its claims. Mel-Park Drugs, *supra*. The taxpayer has failed to present any documentary evidence to support its explanation for not displaying the required decals or permits on its motor vehicle. As a consequence, the taxpayer has failed to rebut the *prima facie* correctness of the Department's determination that the fine at issue should apply in this case. *Id.*

WHEREFORE, for the reason stated above, it is recommended that the Notice
Tax Liability at issue in this case be affirmed in its entirety.

Ted Sherrod
Administrative Law Judge

Date: August 22, 2012