

MF 00-4

Tax Type: Motor Fuel Use Tax  
Issue: Off-Highway Usage Exemption  
Reasonable Cause on Application of Penalties

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	)	
	)	Docket No. 91-ST-0000
v.	)	Acct #0-0000
	)	NTL # 0-000000
JOHN DOE TRUCK SERVICE	)	NTL # 0-00-000000
	)	
Taxpayer	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Verne Evans of McNamara & Evans for John Doe Truck Service.

Synopsis:

John Doe Truck Service (“taxpayer”) filed for refunds of motor fuel tax paid to the Department of Revenue (“Department”) for fuel used off-highway for the periods of October 1987 to June 1989, and October 1989 to June 1991. The Department granted the refund for both periods and then audited the taxpayer for those periods. The Department then issued Notices of Tax Liability (NTLs) for the amount that it determined was erroneously refunded to the taxpayer. The taxpayer timely protested the NTLs. At the hearing in this matter, the parties indicated that they had reached an agreement

concerning the amount of claim or refund that the taxpayer is entitled to receive for fuel used for off-highway non-detention time and power take-offs (PTOs).<sup>1</sup> (Tr. p. 6) The parties presented the following issues at the hearing: (1) whether the taxpayer is entitled to a refund for motor fuel used during off-highway “detention” or “idle” time; (2) whether the taxpayer is entitled to an abatement of the penalty due to reasonable cause; and (3) whether the taxpayer is entitled to a credit greater than the amount originally claimed. After reviewing the record, it is recommended that this matter be resolved partially in favor of the taxpayer and partially in favor of the Department.

FINDINGS OF FACT:

1. For the period of October 1987 to June 1989, the taxpayer filed a claim for refund in the amount of \$5,932.93 for motor fuel taxes paid. The Department refunded the full amount of this claim and then subsequently issued a Notice of Tax Liability for an amount that it claimed was erroneously refunded to the taxpayer. (Tr. pp. 3-6, Ex. EEE, FFF)

2. For the period of October 1989 to June 1991, the taxpayer filed a claim for refund in the amount of \$6,700.26. The Department refunded the full amount of this claim and then subsequently issued a Notice of Tax Liability for an amount that it claimed was erroneously refunded to the taxpayer. (Tr. pp. 3-6, Ex. III, JJJ)

CONCLUSIONS OF LAW:

The first issue addressed by the parties concerns fuel consumed during off-highway “detention” or “idle” time. As the taxpayer explained, one example of off-highway detention time is time spent by a trucker waiting in line for his truck to be loaded at a quarry or unloaded at a job site. (Tr. pp. 37-38) During this time, the engine

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<sup>1</sup> PTOs are mechanisms used to supply power to the hydraulic lift device for the beds of dump trucks.

is running while the driver simply waits in line and the truck idles. On-highway idle time includes time spent waiting on the highway due to, for example, an accident or traffic problems. (Tr. p. 39) The taxpayer claims that all fuel used off-highway is not taxed, including off-highway idle time. The Department claims that the statute does not allow a refund based on idle time, whether it is on-highway or off-highway.

The Motor Fuel Tax Law (35 ILCS 505/1 *et seq.*, formerly Ill.Rev.Stat. 1991, ch. 120, ¶417) imposes a tax on the privilege of operating motor vehicles upon the public highways of Illinois. (35 ILCS 505/2) Section 13 of the statute concerns refunds of the tax and currently provides in part as follows:

“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.

Any person who purchases motor fuel in Illinois and uses that motor fuel in another state and that other state imposes a tax on the use of such motor fuel shall be reimbursed and repaid the amount of Illinois tax paid under Section 2 of this Act on the motor fuel used in such other state. Reimbursement and repayment shall be made by the Department upon receipt of adequate proof of taxes paid to another state and the amount of motor fuel used in that state.

Claims for such reimbursement must be made to the Department of Revenue, duly verified by the claimant (or by the claimant’s legal representative if the claimant has died or become a person under legal disability), upon forms prescribed by the Department. The claim must state such facts relating to the purchase, importation, manufacture or production of the motor fuel by the claimant as the Department may deem necessary, and the time when, and the circumstances of its loss or the specific purpose for which it was used (as the case may be), together with such other information as the Department may reasonably require. No claim based upon idle time shall be allowed. Claims for full reimbursement must be filed not later than one year after the date on which the tax was paid by the claimant. \*\*\*\*“ (emphasis added) 35 ILCS 505/13.

The Department argues that the sentence in section 13 that states “[n]o claim based upon idle time shall be allowed” precludes the taxpayer from receiving a refund for tax paid on fuel used during any type of idle time. The Department notes that in Gem Electronics v. Department of Revenue, 183 Ill.2d 470 (1998) the court stated that when the language of a statute is clear and unambiguous, the language will be given effect without resort to other tools of construction. Gem at 475. The Department claims that section 13 clearly and unambiguously provides that no refund shall be allowed for idle time.

The taxpayer argues that the principle in Gem does not apply in this case because the statute is confusing and ambiguous. Section 2 of the Act explicitly states that the tax is imposed only on the privilege of operating motor vehicles upon the public highways. (35 ILCS 505/2) The first paragraph of section 13 provides for reimbursement of the tax if the motor fuel is used for any purpose other than operating on public highways or waters. (35 ILCS 505/13) Sections 13a, 13a.1, and 17 reiterate that the tax is on motor fuel used on Illinois highways. (35 ILCS 505/13a, 13a.1, 17) The taxpayer claims that if the Department’s interpretation is followed and off-highway idle time is taxable, then this would conflict with the sections that provide that only motor fuel used on-highway is taxable. The taxpayer argues that the clause concerning idle time must mean no claim shall be allowed for idle time on-highway in order for it to be consistent with the rest of the Act.

Although both parties offer persuasive arguments, this sentence was not in the Motor Fuel Tax Law during the time periods covered by the taxpayer’s claims. See Ill.Rev.Stat. 1991, ch. 120, ¶429. The sentence “[n]o claim based upon idle time shall be

allowed” was added by Public Act 88-480, which became effective on January 1, 1994. Because this sentence was not part of the statute during the time periods covered by the claims, the Department’s reliance on the sentence is misplaced. During the time periods covered by the claims, the statute allowed refunds for motor fuel used for any purpose other than operating a motor vehicle upon the public highways or waters. Nothing in the relevant statute concerns idle time, and the use of motor fuel during off-highway idle time falls under the types of uses for which a refund is allowed. The taxpayer’s claims based on off-highway idle time should therefore be allowed.

The other issue raised by the taxpayer concerns the penalty, which may be abated if the taxpayer establishes "reasonable cause" for the failure to timely pay the taxes. See Ill.Rev.Stat. 1991, ch. 120, par. 439.12, incorporating by reference Ill.Rev.Stat. 1991, ch. 120, par. 444. The penalty was assessed in this case after the Department granted the taxpayer’s initial claim and then determined that the claim should have been denied. As the taxpayer has indicated, the taxes were initially timely paid. The penalty would not have been imposed if the Department had denied the initial claim. Under these circumstances, the penalty should be abated.

The last issue is whether the taxpayer is entitled to a refund that is greater than the amount listed on the claims filed with the Department. The prior history of this case is relevant to this issue. The taxpayer previously was a member of a class of taxpayers who filed suit in the Circuit Court of Sangamon County alleging that the Department’s method for calculating refunds for interstate and non-highway use of fuel underestimated the refunds that the taxpayers were entitled to receive. The case ultimately reached the Fourth District Appellate Court, where the court found that the taxpayers failed to

exhaust administrative remedies. In doing so, the appellate court stated in part as follows:

“Plaintiffs [taxpayers] argue they do not have an adequate remedy on remand if they prevail before the Department because their claim for refund will be limited to the amount they initially listed on the forms. We reject this conclusion. It is true that any claim for refund must be made on forms provided by the Department. 35 ILCS 505/13 (West 1994). Also, only evidential and related matters having or possibly having a bearing on the adjustments or issues involved in the case shall be heard and considered at administrative tax hearings. 86 Ill.Adm.Code §200.155(b) (1994). However, as Brutto demonstrates, a taxpayer may still raise arguments relating to the construction of the forms in a tax hearing. In addition, the claimant may still raise claims that the forms violate the state statute. Cf. *Bosworth*, 102 Ill.2d at 249, 464 N.E.2d 1057 (party may attack the constitutionality of a tax statute in an administrative hearing). If these arguments are successful, the Department must recalculate the refund in compliance with the statute, after giving the taxpayer the opportunity to present any evidence required by the new calculation but not the old one.” (Order p. 14)

The Department contends that the taxpayer has not shown that the refund forms erroneously apply the Motor Fuel Tax Law and that the error results in the taxpayer’s claim being understated. The Department states that the operation of the forms did not have any significance in the disallowance of the taxpayer’s claim because the claim was either unsubstantiated or based on an erroneous premise. The Department contends that the amount that it now concedes should be given to the taxpayer is based on properly substantiated PTO and off-highway usage. The Department states that for the second claim period, the taxpayer’s actual claim form made reference only to PTO consumption. In addition, the Department argues that because the taxpayers have not presented evidence that the forms resulted in the claim being understated, the Appellate Court’s order has “not yet come into play.” (Dept. brief, p. 4)

The taxpayer responds by stating that the method the Department used to calculate the amounts due to the taxpayer during this hearing process establishes that the mandated forms do not result in the proper amount of refunds even when the taxpayer has proper substantiation. The taxpayer points out that the method used for calculating refunds on the MFUT-15 form results in a taxable gallons figure that is higher than it should be. This is because the taxable gallons figure on the form is determined by dividing the taxable miles by the miles per gallon (MPG). If the MPG figure is understated, then the taxable gallons figure is overstated. The taxpayer contends that the calculations on the form produce an understated MPG figure because that figure is reached by dividing the “Total miles traveled everywhere” by the “Total fuel consumed everywhere.” The taxpayer claims that in order to calculate an accurate MPG figure, the fuel consumed in running the PTOs (and other non-propulsion usage) should be deducted from the “Total fuel consumed everywhere.” The Department subtracted these non-propulsion gallons from the total gallons to determine MPG for the Stipulation submitted by the parties. Because the MFUT form does not allow for a deduction of the non-propulsion gallons in computing the MPG, which results in an understated MPG figure and an overstated taxable gallons figure, the taxpayer claims that the form violates the statute.

The claim forms at issue in this matter (Exhibits EEE and III) are the Illinois Motor Fuel Tax Refund Claim forms (MFTR), not the MFUT. As the taxpayer noted in its memorandum in support of its Motion for Partial Summary Judgment, the MFUT form is used to obtain a refund of taxes paid on fuel used outside the State of Illinois. (Memorandum, p. 2) The MFTR form is used to obtain a refund of taxes paid on fuel

used for some purpose other than operating a motor vehicle upon the public highways or waters. (Memorandum, p. 2) The MFTR form does not contain the calculations that are on the MFUT form (See Exhibits EEE and III). The MFTR form requires an amount for the total number of tax paid gallons and an amount for the number of tax paid gallons used upon public highways or waters. The difference between these figures is used to determine the refund. Although the MFTR form requires a taxable gallons figure, like the MFUT form, nothing in the Motor Fuel Tax Law, the Department's regulations, or the instructions to the MFTR form requires the taxpayer to use the method on the MFUT form to calculate the taxable gallons figure for the MFTR form. Nothing requires the use of a particular method to reach the figures necessary for the MFTR form, and the taxpayer could have used the method that it now claims is the accurate method for calculating the amount of taxable gallons. Because the MFTR form does not contain calculations that violate the statute, the taxpayer's refund should be limited to the amount originally claimed.

As a final note, the claims for which the taxpayer contends it should receive an amount greater than what was originally claimed are claims that were initially granted and then the Department audited the taxpayer and issued Notices of Tax Liability for the amounts that were erroneously refunded. Although the taxpayer now argues that it should receive an amount greater than what it originally claimed, the Notices of Tax Liability (not Notices of Denial of Claims) are at issue in this matter. The Notices of Tax Liability should be dismissed because the taxpayer is entitled to a credit for off-highway idle time, and therefore the amount that the taxpayer owes for the periods at issue is zero.

The taxpayer would not be entitled to receive additional money back for these time periods because the claim itself is not at issue.

Recommendation:

For the foregoing reasons, it is recommended that the penalty be abated, the refund based on idle time be granted, and the taxpayer's refund be limited by the amount of the original claims.

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Linda Olivero  
Administrative Law Judge