

MF 02-6

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 02-ST-0000
v.)	Acct # 00-00000
)	NTL # 00-00000000
JOHN DOE/)	
ABC IMPLEMENT, LTD.)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew S. Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Tax Liability (“NTL”) to John Doe/ABC Implement, Ltd. for motor fuel use tax. John Doe is an employee of ABC Implement, Ltd. (“taxpayer”). The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license. The taxpayer timely protested the NTL. The parties filed a stipulation of facts, and the Department filed a Motion for Summary Judgment. Joe Blow, president of the taxpayer, filed the documents on behalf of the taxpayer. The parties requested that this

matter be decided based on their written submissions. After reviewing the documentation presented, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is in the business of purchasing, leasing, and selling farm equipment. (Stip. #3)

2. The taxpayer is authorized to transact business in Illinois, but its principal place of business is in Anywhere, Iowa. (Stip. #1)

3. The taxpayer generally contracts with XYZ Trucking for its trucking needs. On August 24, 2001, XYZ Trucking was unavailable to pick up a “corn head” for the taxpayer. The corn head was at XXX Bros. Implement, which is located in Illinois approximately three-fourths of a mile from the Iowa/Illinois border. (Stip. #4, 5)

4. On August 24, 2001, the taxpayer’s employee drove the taxpayer’s pickup truck with trailer into Illinois to pick up the corn head. (Stip. #6)

5. On August 24, 2001, the taxpayer’s employee was stopped approximately one-half mile from the Iowa/Illinois border and was issued a citation for failing to have a valid motor fuel use tax license and decals or failure to have a single-trip permit. (Stip. #7)

6. On October 19, 2001, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1000 for failure to have a valid license while operating the vehicle on August 24, 2001.

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 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). 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; see also 625 ILCS 5/11-1419.03)). 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).

The taxpayer contends that it normally hires a trucking company for its trucking needs, and on the day in question the taxpayer's employee only traveled three-fourths of a mile into Illinois and then returned to Iowa. The taxpayer was not aware that it had to have a fuel tax license for a pickup and trailer. As soon as the taxpayer received the citation, the taxpayer paid the fines and immediately determined the licensing requirements in order to comply with the law. The taxpayer argues that under these circumstances, the penalty should not be imposed.

The taxpayer's circumstances are unfortunate but do not provide a basis for eliminating the penalty. The Motor Fuel Tax Act does not contain a provision that allows the penalty to be abated based on the taxpayer's lack of knowledge of the law or the taxpayer's reasonable attempts to comply with the law. The Act simply requires the taxpayer to obtain the license prior to operating a commercial motor vehicle in Illinois, and the failure to do so requires imposition of the penalty. Because the taxpayer did not have a motor fuel use tax license or a single trip permit on the day that its employee was operating the truck in Illinois, the penalty must be upheld.

It is therefore recommended that the Department's Motion for Summary Judgment be granted.

Linda Olivero
Administrative Law Judge

Enter: May 16, 2002