

MF 04-1

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Tax Decal/Permit

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS**

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

v.

**JOHN DOE/DOE FARMS
Taxpayer**

Docket # 03-ST-0000

Motor Fuel Use Tax Penalty

**Barbara S. Rowe
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis: The Illinois Department of Revenue (hereinafter the “Department”) issued a Notice of Tax Liability (hereinafter the “NTL”) to John Doe/Doe Farms (hereinafter the “Taxpayer”) for motor fuel use tax. The NTL states that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel tax license. The taxpayer timely protested the NTL. A hearing was held and after a thorough review of the facts and law presented, it is recommended that this matter be resolved in favor of the Department. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The *prima facie* case of the Department consisting of the Notice of Tax Liability for Motor Fuel Use Tax was established by the admission into evidence of Department’s Ex. No. 1.

(Tr. p. 6)

2. The taxpayer is located in Kentucky. Taxpayer owns a semi-truck and trailer bearing farm-limited plates issued by the State of Kentucky. In 2003, taxpayer was cited for operating the truck and trailer in Illinois without properly displaying a valid motor fuel use tax license and decal, without a single-trip permit, and without an International Fuel Tax Agreement temporary permit. (Department's Ex. No. 1; Taxpayer's Ex. Nos. 1, 2)

3. Taxpayer entered the State of Illinois to exchange semi-trucks with a dealership in Illinois. He was not transporting cargo. (Dept. Ex. No. 1; Tr. p.12)

4. Taxpayer admits he did not have a fuel permit when he entered the State of Illinois on the date in question. There was no malicious intent; it was due to ignorance. (Tr. p. 11)

5. Upon learning of the violation, taxpayer purchased a temporary permit. (Tr. p. 11)

6. Taxpayer was informed that he could be represented by counsel at the hearing. He declined. (Tr. p. 7)

CONCLUSIONS OF LAW:

The NTL issued by the Department states that 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 (hereinafter referred to as the "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) A “commercial motor vehicle” means:

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 11,793 kilograms, or having 3 or more axles regardless of weight . . . (35 ILCS 505/1.16)

There is no dispute that the vehicle at issue qualifies as a commercial motor vehicle under Illinois law.

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).

Taxpayer asserts that it was not hauling cargo, made no money on the trip, and was simply in Illinois to swap the truck for another one. The law however, mandates a license or permit for the operation of the vehicle in Illinois, without to regard to purpose.

Taxpayer left Kentucky at 1:00 a.m. for the 9:00 a.m. hearing, and believes as a self-employed farmer the \$1,000 fine is unreasonable. (Tr. pp. 11-13) Taxpayer's circumstances are unfortunate but do not provide a basis for eliminating the penalty. Taxpayer clearly made a good faith effort to obtain the license and comply with the law after the issuance of the citation. Nevertheless, 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 after a citation is issued. 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 the imposition of a penalty. Because the taxpayer did not have an Illinois motor fuel use tax license, a single trip permit, or an International Fuel Tax Agreement license on the day it was operating the truck in Illinois, the penalty must be upheld.

For the foregoing reasons, it is recommended that the penalty be upheld.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
March 5, 2004