

MF 04-3

Tax Type: Motor Fuel Use Tax

Issue: Dyed-Undyed Diesel Fuel (Off Road Usage)

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS)	
)	
v.)	Docket No. 03-ST-0000
)	Acct # 00-00000
DOE GAS & OIL, INC.)	NTL # 00-000000 0
)	NTL # 00-000000 0
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*, for Doe Gas & Oil, Inc.

Synopsis:

The Department of Revenue (“Department”) issued two Notices of Penalty for Dyed Diesel Fuel Violation (“Notices”) to Doe Gas & Oil, Inc. (“taxpayer”). The Notices alleged that the taxpayer failed to display the required notice on its shipping papers and storage facility. The taxpayer timely protested the Notices. The parties filed a joint stipulation of facts and have requested that this matter be resolved based on the stipulations without an evidentiary hearing. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On October 27, 2003, an inspector visited a fuel distribution facility owned by the taxpayer in Omaha, Illinois and issued two citations: one for violating 35 ILCS 505/4e (dyed diesel fuel; notice on sales documentation) and the other for violating 35 ILCS 505/4f (dyed diesel fuel; notice on storage containers and facilities). (Stip. #1)

2. On November 21, 2003, the Department issued two Notices of Penalty for Dyed Diesel Fuel Violation to the taxpayer, one for each violation. Each notice imposed a penalty of \$500. (Stip. #2)

3. The first violation occurred because an invoice for the sale of dyed diesel fuel to a farm customer was mistakenly not stamped with the statutory notice “Dyed Diesel Fuel Nontaxable Use Only,” which was the taxpayer’s established routine. The taxpayer concedes that it owes this penalty. (Stip. #3)

4. The second violation was for failure to put the statutory notice on bulk storage tanks containing dyed diesel fuel. Two of the bulk tanks at the facility store dyed diesel fuel. On the date of the inspection, no notice was attached directly to either tank. (Stip. #4)

5. A notice was attached to the three-inch loading pipe where all dyed diesel fuel is removed from the tanks that states “Dyed Diesel Fuel, Nontaxable Use Only.” This loading spigot is the only point at which dyed diesel fuel may be removed from the two bulk storage tanks and it is not used for removal of any other type of fuel. Because of the size of the spigot and its positioning, only top-loading tanker trucks are capable of using this marked spigot to unload dyed diesel fuel. The notice is written in two-inch black

letters on a white background, and the notice is wrapped around the pipe spigot in plain sight of any user. (Stip. #5)

CONCLUSIONS OF LAW:

Section 4f of the Motor Fuel Tax Act (“Act”) (35 ILCS 505/1 *et seq.*), provides as follows:

“A legible and conspicuous notice stating “Dyed Diesel Fuel, Non-taxable Use Only” must appear on all containers, storage tanks, or facilities used to store or distribute dyed diesel fuel.” (35 ILCS 505/4f)

Subsection 14 of Section 15 of the Act provides as follows:

“14. Any person who owns, operates, or controls any container, storage tank, or facility used to store or distribute dyed diesel fuel without the notice required by Section 4f shall pay the following penalty:
First occurrence.....\$ 500
Second and each occurrence thereafter.....\$1,000” (35 ILCS 505/15)

The taxpayer contends that the penalty that was imposed for the failure to put a notice on the two bulk storage tanks should be waived because the notice was on the loading pipe. All of the dyed diesel fuel that is removed from the tanks must be removed through that pipe.

Section 4f mandates that the notice be put on all containers, storage tanks, or facilities used to store or distribute dyed diesel fuel. The taxpayer’s bulk storage tanks store dyed diesel fuel, but they did not have the notice directly attached to them on the day that the citations were issued. Although it is helpful that the notice is also on the loading pipe, the statute requires it to be on the tanks. Therefore, both penalties in this case must be upheld.

Linda Olivero
Administrative Law Judge

Enter: May 7, 2004