

MF 96-5
Tax Type: MOTOR FUEL USE TAX
Issue: Off-Highway Usage Exemption

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Docket #
v.)	License #
TAXPAYER)	
)	Karl W. Betz
Taxpayer)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS

THIS CASE INVOLVES TAXPAYER (HEREINAFTER THE "TAXPAYER"), A BUSINESS THAT HAULED CARGO FOR HIRE IN COMMERCIAL MOTOR VEHICLES BETWEEN OCTOBER, 1987 AND JUNE, 1989. THE TAXPAYER FILED A CLAIM FOR CREDIT WITH THE DEPARTMENT FOR ALLEGED NON-HIGHWAY USE OF MOTOR FUEL FOR THAT PERIOD. THE STATED REASON FOR THE NON-HIGHWAY USE ON THE CLAIM FORM WAS USING PTO (POWER TAKE-OFF) OPERATED DUMP TRAILERS. THE DEPARTMENT PAID THE CLAIM AND THEN ASSIGNED AN AUDITOR TO ASCERTAIN THE VALIDITY OF THE ALLEGED NON-HIGHWAY USAGE OF MOTOR FUEL. THE AUDITOR DETERMINED THAT THE CLAIM WAS NOT VALID RESULTING IN THE DEPARTMENT ISSUING NOTICE OF TAX LIABILITY (NTL) NO. XXXXX IN THE AMOUNT OF \$5,026.00 (INCLUSIVE OF TAX, PENALTY AND INTEREST).

OWNERS, OWNERS, APPEARED AT HEARING AND OWNERS OFFERED A STATEMENT IN SUPPORT OF HIS POSITION.

AT ISSUE IN THIS PROCEEDING IS IF TAXPAYER IS ENTITLED TO A REFUND FOR SPECIAL FUEL ALLEGEDLY USED FOR OFF-ROAD PURPOSES. IT IS THE POSITION OF TAXPAYER THAT ITS CLAIMS ARE BASED NOT SOLELY UPON FUEL USED BY THE PTO MECHANISMS ON ITS TRUCKS, BUT RATHER THAT ITS TRUCKS WERE ENGAGED IN OFF-ROAD HAULING OPERATIONS THAT QUALIFIED SOME FUEL USAGE FOR REFUND. IT WAS THE POSITION OF THE DEPARTMENT PRIOR TO HEARING THAT TAXPAYER DID NOT SUBMIT SUFFICIENT PROOF TO ESTABLISH THE AMOUNT OF NON-HIGHWAY USED FUEL FOR WHICH IT APPLIED FOR REFUND ON THE RMFT-11 MOTOR FUEL TAX REFUND FORM. IT IS ALSO THE POSITION OF THE DEPARTMENT THAT TO ALLOW TAXPAYER'S TOTAL REFUND TO STAND WOULD BE A DOUBLE CREDIT SITUATION FOR THE PORTION OF THE FUEL FOR WHICH TAXPAYER HAS ALREADY RECEIVED CREDIT AS A PURCHASE OF TAX-PAID SPECIAL FUEL ON LINE 7A OF THE MOTOR FUEL USE TAX RETURNS (IDR-280S) IT FILED PRIOR TO ITS SUBMISSION OF THE RMFT-11 REFUND FORMS.

IMMEDIATELY PRIOR TO HEARING SOME RECORDS WERE PRODUCED ON BEHALF OF TAXPAYER AND THEN REVIEWED BY THE AUDITOR. THE AUDITOR'S EXAMINATION OF THEM LED HIM TO DETERMINE TAXPAYER HAD A NON-HIGHWAY FUEL USAGE PERCENTAGE OF 11.305, AND THE AUDITOR FURTHER ADJUSTED THIS BY THE AMOUNT OF SPECIAL FUEL THAT TAXPAYER HAD ALREADY LISTED AS TAX-PAID FUEL ON LINE 7A OF ITS IDR-280 RETURNS. I FIND THESE REVISED AMOUNTS OF FUEL DETERMINED TO BE USED OFF-HIGHWAY SHOULD BE DEDUCTED FROM LIABILITY IN THE FINAL ASSESSMENT.

FINDINGS OF FACT

AFTER REVIEWING THE TRANSCRIPT OF RECORD, INCLUDING ALL DOCUMENTARY EVIDENCE ADMITTED THEREIN, I MAKE THE FOLLOWING FACTUAL DETERMINATIONS:

1. THE TAXPAYER CONDUCTS BUSINESS OPERATIONS AS A TRUCKING COMPANY BY HAULING ASPHALT, SAND, ROCK, COAL, GRAVEL, ETC. (TR. PP. 15-16)
2. TAXPAYER FILED A REFUND CLAIM ON FORM RMFT-11 WITH THE DEPARTMENT FOR ILLINOIS MOTOR FUEL TAX ALLEGEDLY USED FOR PURPOSES OTHER THAN OPERATING VEHICLES UPON THE PUBLIC HIGHWAYS. THE DEPARTMENT INITIALLY APPROVED THE CLAIM AND THEN REFERRED IT TO THE AUDIT DIVISION WHICH RESULTED IN THE DEPARTMENT PERFORMING A CLAIM VERIFICATION AUDIT UPON TAXPAYER. (DEPT. EX. NOS. 1 AND 2)
3. FOR THE AUDIT PERIOD THE AUDITOR REDUCED THE ALLOWABLE AMOUNT OF TAXPAYER'S CLAIM TO ZERO. PURSUANT TO STATUTORY AUTHORITY, THE AUDITOR DID CAUSE TO BE ISSUED A CORRECTION OF RETURNS OR DETERMINATION OF MOTOR FUEL TAX DUE AND THIS SERVED AS THE BASIS FOR THE NTL. (DEPT. EX. NOS. 1 AND 2)
4. DURING THE TIMEFRAME AT ISSUE HEREIN TAXPAYER MADE A CONSIDERABLE NUMBER OF OFF-HIGHWAY TRIPS WITH ITS TRUCKS TO HAUL COAL IN AND AROUND THE MINES AT DESOTO AND DUQUOIN. TAXPAYER'S TRUCKS USED 11.305 % OF ITS TOTAL FUEL IN THESE OFF-HIGHWAY OPERATIONS DURING THE AUDIT PERIOD. (TR. PP. 10; 15-17)

CONCLUSIONS OF LAW

SECTION 13 OF THE MOTOR FUEL TAX LAW (35 ILCS 505/13) AUTHORIZES A REFUND WHEN MOTOR FUEL IS LOST OR USED FOR A PURPOSE OTHER THAN OPERATING A VEHICLE UPON THE PUBLIC HIGHWAYS. THIS SECTION STATES IN PERTINENT PART:

THE CLAIM SHALL 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 THE LOSS OR NONTAXABLE USE OCCURRED, 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.

THE DEPARTMENT MAY MAKE SUCH INVESTIGATION OF THE CORRECTNESS OF THE FACTS STATED IN SUCH CLAIMS AS IT DEEMS NECESSARY.

SECTION 13 AUTHORIZES REFUNDS WHEN MOTOR FUEL IS USED FOR A PURPOSE OTHER THAN OPERATING A MOTOR VEHICLE UPON THE PUBLIC HIGHWAYS, BECAUSE THE TAX IS IMPOSED ON THE PRIVILEGE OF OPERATING MOTOR VEHICLES UPON THE PUBLIC HIGHWAYS. (35 ILCS 505/2). IN THE CONTEXT OF A MOTOR FUEL TAX REFUND CLAIM, THE ABOVE-CITED STATUTORY PROVISION REQUIRES A FILING PARTY TO PROVIDE FACTUAL INFORMATION RELATING TO THE FUEL PURCHASE, ALONG WITH OTHER INFORMATION THAT THE DEPARTMENT MAY REASONABLY REQUIRE, AND THE DEPARTMENT IS AUTHORIZED TO INVESTIGATE THE CORRECTNESS OF THE INFORMATION PROVIDED IN CONJUNCTION WITH SUCH CLAIM. WHEN A BUSINESS IS MAINTAINING THAT IT PURCHASED FUEL TAX-PAID AND THEN USED SOME FOR AN OFF-HIGHWAY PURPOSE, THE INFORMATION THAT SHOULD BE MAINTAINED INCLUDES VERIFIABLE RECORDS THAT SHOW THE NUMBER OF OFF-HIGHWAY MILES DRIVEN BY TAXPAYER VEHICLES.

I FIND THE EVIDENCE ADDUCED ESTABLISHES THAT TAXPAYER IS ENTITLED TO A CREDIT FOR NON-ROAD USAGE. THE CALCUALTION OF THE PERCENTAGE OF OFF-HIGHWAY USAGE MADE BY THE AUDITOR AT TIME OF HEARING WAS FURTHER ADJUSTED BY THE AMOUNT OF SPECIAL FUEL TAXPAYER HAD ALREADY TAKEN AS A CREDIT ON LINE 7A OF ITS IDR-280 MOTOR FUEL USE TAX RETURNS, AND THE AUDITOR VERIFIED THAT NOT ALL THE CONTESTED FUEL WAS TAKEN EARLIER BY TAXPAYER AS A CREDIT ON LINE 7A OF THE IDR-280S.

IN SUMMARY, I RECOMMEND THE REVISED AMOUNT OF ALLOWABLE FUEL CREDITS BE TRANSLATED INTO TAX AND DEDUCTED FROM THE NTL TO DETERMINE THE AMOUNT OF LIABILITY FOR FINAL ASSESSMENT.

RECOMMENDATION

BASED UPON MY AFORMENTIONED FINDINGS OF FACT AND CONCLUSIONS OF LAW, I RECOMMEND THE DEPARTMENT REDUCE NOTICE OF TAX LIABILITY NO. XXXXX, AND ISSUE A FINAL ASSESSMENT.

KARL W. BETZ
ADMINISTRATIVE LAW JUDGE