

MF 96-7

Tax Type: MOTOR FUEL USE TAX

Issue: Interstate Special Fuel Usage

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 #
v.	)	Permit #
	)	
TAXPAYER	)	
	)	Karl W. Betz
	)	Administrative Law Judge
Taxpayer	)	

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RECOMMENDATION FOR DISPOSITION

SYNOPSIS

This case involves TAXPAYER (hereinafter the "taxpayer"), a business that conducted motor carrier operations by hauling cargo for hire in commercial motor vehicles on the highways of Illinois between January, 1989 and December, 1991.

On December 29, 1992, the Department of Revenue (hereinafter "Department") issued Corrected Notice of Tax Liability (NTL) No. XXXXX for Illinois Motor Fuel Use Tax for the period of January 1, 1989, through December 31, 1991, in the amount of \$13,091.00 inclusive of tax, penalty and interest. The Department issued the NTL following an audit it performed upon taxpayer, and the adjusted liability is based upon changes the Department made in the quarterly fuel tax returns (IDR-280's) filed. These changes result from the Department revenue auditor's adjustment of the amounts of total "everywhere" mileage, Illinois miles, and Illinois tax paid fuel reported by taxpayer on IDR-280 lines 1, 4 and 7a. These changes and their resulting tax effect are at issue in this proceeding.

The taxpayer having made a timely protest of the NTL, a hearing was scheduled by the Department in this matter. WITNESS of taxpayer presented a statement at hearing.

FINDINGS OF FACT

After reviewing the transcript of record, including all documentary evidence admitted therein, I make the following factual determinations:

1. The taxpayer is a trucking company that conducts business operations as a motor carrier by hauling loads for hire. (Tr. pp. 3-5)

2. 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 NTL No. F-XXXXX (Dept. Ex. Nos. 1 and 2)
3. The *prima facie* case of the Department was established by the introduction of its Notice of Tax Liability and corrected return into evidence. (Tr. pp. 2, 5; Dept. Ex. Nos. 1 and 2)
4. While taxpayer offered some general testimony, the taxpayer did not submit any documentary evidence comprised of its books and records to support its position that the audit of the Department is incorrect. (Tr. pp. 2, 6)

### **CONCLUSIONS OF LAW**

It is well settled, under Illinois law, that once the auditor's corrected return is introduced into evidence at an administrative hearing before the Department, the *prima facie* case of the Department is established and the burden then shifts to taxpayer to establish by competent documentary evidence through its books and records that the corrected return is not accurate. Although taxpayer did not produce any documentary evidence in this hearing, it argues that the Department's audit is not correct. However, a taxpayer cannot rebut the *prima facie* case simply by denying the reasonableness of the Department's audit methodology or by suggesting hypothetical weaknesses. (Vitale v. Department of Revenue, (1983), 118 Ill.App. 3d 210; Masini v. Department of Revenue, (1978), 60 Ill.App. 3d 11, 17).

The auditor had requested source documents in order to establish the Illinois miles run by taxpayer's trucks during the audit period, and the trip sheets taxpayer provided were not completely filled out by many drivers, and some were combining more than one trip on an envelope while others were leaving parts of trips out. Furthermore, taxpayer could not always supply beginning and ending odometer readings to show total miles driven for the trips. Because the documents taxpayer did provide during audit were not complete, I find the auditor's use of a block sample of October through December, 1991, when most records were available, and his extrapolation of that period's findings to the remainder of the audit timeframe to be a reasonable auditing procedure that meets a minimum standard of reasonableness.

In the case of Lakeland Construction Company v. Department of Revenue (1978), 62 Ill.App.3d 1036, the court was faced with a situation where a taxpayer had claimed an alleged off-road usage exemption for motor fuel tax. The facts included a situation where the taxpayer did not retain driver records that would have substantiated the claimed exemption. The court noted that the amount of tax determined by the Department according to its best judgment and information under the Motor Fuel Tax Act is deemed to be "prima facie correct", and, thereafter, the taxpayer has the burden of proving by competent evidence that the proposed assessment is not correct. (Lakeland at 1039). The Lakeland Court also restated the principle that the duty to keep records is a mandatory one and the failure to keep or produce records for tax purposes will permit a negative inference against the taxpayer, that if the records had been produced they would have reflected unfavorably upon him. Lakeland at 1039, citing Copilevitz v. Dept. of Revenue (1968), 41 Ill.2d 154, 157.

I find taxpayer did not provide statutorily required source documents to the Department, as Section 13a.2 of the Motor Fuel Tax Law (35 ILCS 505/13a.2) states in pertinent part:

"Each motor carrier shall keep records which accurately reflect the type and number of gallons of motor fuel consumed, the number of miles traveled with each type of fuel on the highways of each jurisdiction and the highways of Illinois, the type and number of gallons of tax paid fuel purchased in this State, . . ."

In summary, I find the Department's *prima facie* case has not been overcome by the taxpayer.

**RECOMMENDATION**

Based upon the aforementioned findings of fact and conclusions of law, I recommend the Department finalize Notice of Tax Liability No. XXXXX in its entirety and issue a Final Assessment.

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Karl W. Betz  
Administrative Law Judge