

MF 12-01

Tax Type: Motor Fuel

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

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

THE DEPARTMENT OF REVENUE)	No.:	XXXXXX
OF THE STATE OF ILLINOIS)	NTL No.:	XXXXXX
)	Acct. No.:	XXXXXX
)		
v.)	Dyed Diesel Fuel Violation	
)		
ABC BUSINESS,)	Julie-April Montgomery	
Taxpayer.)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe, President, ABC Business; and Gary Stutland, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

On May 9, 2011, the Department of Revenue (“Department”) assessed ABC Business (“Taxpayer”) a penalty of \$1,000 alleging the presence of dyed diesel fuel in the ordinary attached fuel tank of Taxpayer’s Mack truck tractor passenger saddle fuel tank (“Mack tank”) (Dept. Gr. Ex. No. 1) in violation of the Motor Fuel Tax Act (“Act”). 35 ILCS 505/1 *et seq.* Taxpayer made a timely protest of this matter. A hearing was held during which the Taxpayer presented no evidence, documentary or testimonial. In fact, the Taxpayer admitted it no longer wished to contest the matter. Tr. p. 8. Based upon the evidence submitted and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof, I make the following findings of fact and conclusions of law.

Findings of Fact:

1. On April 21, 2011, Brian Cooper of the Department’s Bureau of Criminal Investigations inspected Taxpayer’s Mack tank for compliance with the

Act. Agent Cooper retrieved a four (4) ounce sample of fuel from Taxpayer's Mack tank to determine if dyed diesel fuel was present. Dept. Gr. Ex. No. 1 ("Activity Report"); Tr. pp. 6-8.

2. Agent Cooper's testing of the Mack tank indicated the presence of dyed diesel fuel at a dye concentration of 4.1 parts per million. Dept. Gr. Ex. No. 1 ("Petro Spec DT100C" printout); Tr. pp. 6-8.
3. The presence of dyed diesel fuel in the Mack tank was Taxpayer's first violation of the Act. Dept. Gr. Ex. No. 1 ("Notice of Penalty for Dyed Diesel Fuel Violation"); Tr. p. 5, 8.

Conclusions of Law:

Paragraph 15 of section 15 of the Act provides in relevant part as follows:

If a motor vehicle required to be registered for highway purposes is found to have dyed diesel fuel within the ordinary fuel tanks attached to the motor vehicle..., the operator shall pay the following penalty:

First occurrence..... \$1,000
35 ILCS 505/15.

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 owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 505/21; 120/5. Once the Department establishes its *prima facie* case, the burden of proof shifts to the taxpayer to prove, by sufficient documentary evidence, that the penalty assessed 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).

In the present case, the Department's *prima facie* case was established when the Department's certified copy of the Notice of Penalty for Dyed Diesel Fuel Violation ("Notice") issued on May 9, 2011 was admitted into evidence. The Notice stated that this was the Taxpayer's first offence. Once the Notice was admitted into evidence, the

Department's position was presumed to be legally correct. In addition, the Department had the April 21, 2011 Activity Report of Agent Cooper and the Diesel Fuel Dye Analyzer Sample Receipt admitted into evidence. Dept. Gr. Ex. No. 1. The sample of fuel retrieved from Taxpayer's Mack tank confirmed that 4.1 parts per million of dyed diesel fuel was present in violation of the Act.

Taxpayer presented no evidence, testimonial or documentary. Taxpayer made no arguments on its behalf nor did it deny or refute the presence of dyed diesel fuel in its Mack tank. In fact, the Taxpayer stated that it no longer wished to contest the Notice. Tr. p. 8.

The undisputed evidence establishes that dyed diesel fuel was present in Taxpayer's Mack tank in violation of Illinois law.

WHEREFORE, for the reasons stated above, it is recommended that the \$1,000 penalty be affirmed.

November 23, 2011

Julie-April Montgomery
Administrative Law Judge