

MF 07-7

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

ABC EXPRESS, LTD., and
John Doe, owner,

Taxpayer

No. 06-ST-0000
Acct: 00-00000
NTL: 00-000000 0

RECOMMENDATION FOR DECISION

Appearances: Mr. Marc Muchin, Special Assistant Attorney General on behalf of the Department of revenue; Mr. John Doe, *pro se*.

Synopsis:

This matter arose on the timely protest of the taxpayer to a Notice of Tax Liability for Motor Fuel Tax issued by the Department of Revenue (Department) on or about April 17, 2006. The liability was assessed against ABC Express, Ltd. And John Doe for operating a commercial motor vehicle within Illinois without a valid motor fuel tax license or without a valid single trip permit. Following a short hearing and listening to the arguments of counsel, I recommend this matter be resolved in favor of the Department.

Findings of Fact:

1. The Department's prima facie case together with all jurisdictional elements therein was established by the admission into evidence of the Notice of Tax Liability under certificate of the Director. (Tr. p. 7)

2. Mr. Doe presented an original of a valid Illinois single trip permit. However, the permit was dated subsequent to the date of incidence and through testimony it appears that it was purchased from the Illinois State Police only after being stopped by them for not having a valid license or displaying a decal as required by law.

3. Mr. Doe's testimony indicates that he came into the State of Illinois with a commercial motor vehicle, originating in the State of Colorado, intending to purchase a single trip license at the first opportunity, but found the weigh station closed. (Tr. p. 6)

4. Thereafter, with the interlude of several days, Mr. Doe drove the vehicle to the Peterbilt truck dealership, near the Wisconsin State line. On the way back to Clarendon Hills, Illinois, he was stopped by the Illinois State Police for being in violation of the Illinois Motor Fuel Tax Law requirements.

5. Mr. Doe does not deny any of the principle elements of the case and presents only facts in attempted mitigation.

Conclusions of Law:

The NTL issued by the Department indicate that the taxpayer was found to be operating a commercial motor vehicle in the State of Illinois without a valid motor fuel

use tax license pursuant to Section 13(a)(4) of the Motor Fuel Tax Act, 35 ILCS 505/1 *et seq.*). That act provides in relevant part:

Except as provided in Section 13(a)(5) of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. (35 ILCS 505/13(a)(4))

Section 13(a)(5) provides a singular exception to the need for an IFTA license for motor carriers holding a single trip permit. A “motor carrier” is defined as any person who operates a commercial motor vehicle in the State of Illinois. (35 ILCS 505/1.17). Section 13(a)(4) also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. Section 13(a)(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 the license or permit under Sections 13(a)(4) or 12(a)(5) of the Act must pay a minimum of \$1,000 as a penalty. There is no exception in the Act that makes the imposition of a fine inapplicable if the motor carrier is not hauling goods. It is operation of the commercial vehicle alone that requires registration and licensure.

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. v. Department of Revenue*, 62 Ill. App. 3d 1036, 1039 (2ⁿ Dist. 1978).

Here the taxpayer contends that on entering Illinois he intended to stop at the first available weigh station and purchase a single trip ticket, since he was not hauling any goods and was aiming to sell the truck. However, the first weigh station he incurred was closed and he proceeded to his final destination without purchasing any trip ticket. He further proceeded to drive from Clarendon Hills to the Wisconsin State line and was on his way back to the site of origin when stopped by the state police several days after entering the State. Even assuming that the port of entry station was closed per testimony the facts mitigate against Mr. Doe because he made no attempts thereafter to satisfy his statutory burden. The fact that the police indicated “no problem” with the purchase of a single trip ticket at that time (Tr. p. 6), this does not obviate the legal need to have obtained one prior to being stopped nor alleviate the consequences of failing to do so.

While I can sympathize with taxpayer’s situation here and the fact that he made an attempt to purchase the necessary single trip ticket in order to comply with the statute, that sympathy must evaporate when faced with the continued operation of the vehicle thereafter without registration or licensure, even though the intent was to rid himself of the truck. The provision of the act is clear that operation of a motor vehicle in the state with out registration or licensure is subject to penalty and the ignorance of those requirements requires that a penalty imposed.

It is therefore recommended that NTL 00-000000 be upheld in its entirety.

Date: 1/8/2007

Richard L. Ryan
Administrative Law Judge