

MF 13-01
Tax Type: Motor Fuel Tax
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	}	No.	XXXXX
v.		Account ID	XXXXX
		Letter ID	XXXXX
		Period	3/20/12 – 3/21/12
ABC BUSINESS, INC., Taxpayer		Ted Sherrod	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General John Alshuler on behalf of the Illinois Department of Revenue; Larry Woodward, Esq. on behalf of ABC BUSINESS, Inc.

Synopsis:

On April 5, 2012, the Illinois Department of Revenue ("Department") issued Notices of Tax Liability for Illinois Motor Fuel Use Tax Second or Subsequent Offense ("Notices of Tax Liability") to ABC BUSINESS, Inc. ("taxpayer") for operating commercial motor vehicles in Illinois "without appropriate credentials (*i.e.*, IFTA license, Illinois Single-Trip Permit, 30-day IFTA temporary permit, required decals)." The taxpayer timely protested these Notices of Tax Liability, and a hearing was held to address the taxpayer's protest on March 12, 2013. After reviewing the record of the hearing proceedings and documentary evidence submitted by the

Department, it is recommended that the decision of the Director of the Department of Revenue (“Director”) be that the taxpayer was liable for the tax imposed by the Notices of Tax Liability.

Findings of Fact:

1. On March 20, 2012, the taxpayer was issued IFTA Citation number XXXX citing the taxpayer for operating a commercial motor vehicle in Illinois without properly displaying required decals, or without a valid Illinois Single-Trip permit or a valid 30-day International Fuel Tax Agreement temporary permit. Department Group Exhibit (“Ex.”) 1.
2. On March 21, 2012, the taxpayer was issued IFTA Citation number XXXX and IFTA Citation number XXXX citing the taxpayer for operating commercial motor vehicles in Illinois without properly displaying required decals, or without a valid Illinois Single-Trip permit or a valid 30-day International Fuel Tax Agreement temporary permit. *Id.*
3. On April 5, 2012, the Department issued to the taxpayer Notices of Tax Liability for Illinois Motor Fuel Use Tax, Letter ID number XXXX, Letter ID number XXXX and Letter ID number XXXX for motor fuel use tax each of which indicated a penalty due of \$2,000 for a second or subsequent failure to display required credentials while operating a vehicle in Illinois. *Id.* The Notices of Tax Liability were admitted into evidence under certification of the Director . *Id.*
4. During hearing proceedings, the taxpayer indicated that it does not wish to contest Notice of Tax Liability number XXXX . Tr. p. 5.¹

¹ During the evidentiary hearing, counsel for the taxpayer stated that the taxpayer is not contesting “the first [citation] issued” that has a “ letter I.D. ending in XX” which it identifies as IFTA citation number XXXX. Tr. p. 5. The record indicates that the first IFTA citation issued that is the subject of these proceedings having a Letter ID number ending in XX is IFTA citation XXXX. Based upon the foregoing, I find that the IFTA citation that is not being contested is IFTA citation number XXXX.

5. The taxpayer admits that it was operating its motor vehicles in Illinois on March 21, 2012 without the proper permits and decals. Tr. pp. 9, 13.
6. The taxpayer was aware of the need for permits and decals, but contends that it was unable to comply with rules requiring these on its commercial vehicles operating in Illinois on March 21, 2012 due to extenuating circumstances beyond the taxpayer's control. Tr. pp. 8-14, 18.

Conclusions of Law:

The Notices of Tax Liability issued by the Department allege that the taxpayer was found operating commercial motor vehicles in Illinois without properly displaying required decals, and without either valid Illinois Single-Trip Permits or 30-day International Fuel Tax Agreement temporary permits. Department Group Ex. 1. Section 13a.4 of the Motor Fuel Tax Act (the "Act") (35 **ILCS** 505/1 *et seq.*) provides, in part, as follows:

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

Section 13a.5 provides for an exception for motor carriers holding a Single-Trip Permit. 35 **ILCS** 505/13a.5.

Section 13a.4 of the Act also provides that the required motor fuel tax decals shall be displayed in the cab of each vehicle. 35 **ILCS** 505/13a.4. Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without properly displayed decals or without a valid 30 day International Fuel Tax Agreement permit or Single-Trip permit, then the person required to obtain decals or a permit under sections 13a.4 or 13a.5 of the Act must pay

\$1,000 as a penalty for the first offense and \$2,000 for each subsequent offense. 35 ILCS 505/13a.6(b).

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 amount of tax due. 35 ILCS 505/21. The burden shifts to the taxpayer to prove, by sufficient documentary evidence, that the assessment is incorrect once the Department has established its *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the Notices of Tax Liability were admitted into evidence. In response, the taxpayer admitted that it did not display the required decals on its vehicles and did not possess any of the required permits on the day in question, but stated that this failure was due to extenuating circumstances beyond its control. Tr. pp. 8-14, 18.

The record in this case indicates that the taxpayer does business in Illinois and Iowa and has vehicles with state license plates for use in each of these states. *Id.* While John Doe, the taxpayer's president (tr. p. 8) stated that the taxpayer normally operates only vehicles with Illinois license plates in Illinois, he stated that it was required to use a vehicle that did not have the proper Illinois credentials because of fires involving one of its vehicles on March 20, 2012. Tr. pp. 8-14, 18. He stated that, on March 21, 2012, he was ordered by the Illinois State Police to immediately remove the contents of its vehicle that was damaged by the fires, which had been dumped on private property. *Id.* He indicated that, upon learning of the State Police demand, he sent a truck that did not have Illinois license plates, decals or any required permits because this was the only truck available to comply with the State Police demands. *Id.* He also stated that,

on March 21, 2012, an additional vehicle that did not have the proper permits or decals was inadvertently brought into the state by an employee using it to replace the vehicle that was damaged. *Id.* He argues that the presence of these vehicles in Illinois without required state credentials was due to circumstances that were completely beyond the taxpayer's control. *Id.*

While I can sympathize with the taxpayer's situation, there is no exception in the Act that provides for liability mitigation or waiver of the fines at issue based upon extenuating circumstances whether or not they are within the taxpayer's control. The Act provides that no motor carrier shall operate without first securing appropriate credentials from the Department or securing an appropriate permit issued under the International Fuel Tax Agreement by any member jurisdiction. Nothing in the Act allows for an abatement of the penalty when a party fails to first obtain and display required credentials before operating a motor vehicle in this state. Moreover, as noted above, in order to rebut the Department's *prima facie* case, the taxpayer was required to offer documentary evidence supporting its claims. Mel-Park Drugs, *supra*. The taxpayer has failed to present any documentary evidence to support its explanation for not possessing or displaying the required credentials on its motor vehicles that were penalized. As a consequence, the taxpayer has failed to rebut the *prima facie* correctness of the Department's determination that the fines at issue should apply in this case. *Id.*

WHEREFORE, for the reasons stated above, it is recommended that the Notices of Tax Liability at issue in this case be affirmed in their entirety.

Ted Sherrod
Administrative Law Judge Date: June 21, 2013