

ST 14-16

Tax Type: Sales Tax

Tax Issue: Motor Fuel Tax Claim For Refund

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

ABC BUSINESS,)	Docket No.	XXXX
)	Claim Periods	1/01 — 6/01
)		
v.)		
THE DEPARTMENT OF REVENUE)	John E. White,	
OF THE STATE OF ILLINOIS,)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances:

David Blum and Emily Hoyt, Levenfeld Pearlstein, appeared for ABC BUSINESS; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

The matter involves the Illinois Department of Revenue's (Department) denial of the amended return ABC BUSINESS (Taxpayer) filed to claim a refund of Illinois motor fuel taxes paid to the person from whom Taxpayer purchased motor fuel, in Illinois, during the months of January through June 2011. The issue is whether Taxpayer is entitled to a refund under § 13 of the Motor Fuel Tax Law (MTFL). 35 ILCS 505/13.

The hearing was held at the Department's offices in Chicago. At hearing, Taxpayer offered books and records. I am including in this recommendation findings of fact and conclusions of law. I recommend the denial be finalized as issued.

Findings of Fact:

1. On January 28, 2011, Taxpayer applied with the Department for a license as an Illinois distributor of motor fuel, pursuant to § 3 of the MTFL. 35 ILCS 505/3. Hearing Transcript (Tr.), pp. 8-11 (stipulation of facts agreed to at hearing); Taxpayer Ex. C (license number included on claim form).

2. Before the Department granted Taxpayer a distributor's license, Taxpayer purchased motor fuel from a seller located in Someplace, Illinois. Taxpayer Ex. B (copies of invoices from seller to Taxpayer, dated during months at issue).
3. The invoices the Illinois seller prepared and issued to Taxpayer, regarding Taxpayer's motor fuel purchases during January through June of 2011, show amounts the seller charged for Illinois gasoline (i.e. motor fuel) tax and Iowa motor fuel tax. Taxpayer Ex. B. Taxpayer paid the purchase price for such motor fuel, including the charges for Illinois and Iowa taxes. *Id.*
4. Taxpayer filed a single amended return form, RMFT-11-A, Illinois Motor Fuel Tax Refund Claim, regarding the months of January through June, 2011. Taxpayer Ex. A (copy of completed form and attachments).
5. The Department denied Taxpayer's refund on August 31, 2011. Department Ex. 1 (copy of Denial)
6. The Denial provided, in pertinent part:

This is to acknowledge receipt of your claim for refund of Illinois Motor Fuel Tax for the period covering 01/11 to 06/11 in the amount of \$XXXX. Please be advised that your claim is denied for the following reason:

- Claimant did not pay Motor Fuel Tax to Iowa, therefore; this precludes you from receiving a Motor Fuel Tax refund.

Department Ex. 1.

7. After the months at issue, the Department issued a motor fuel distributor's license to Taxpayer, who was then able to purchase motor fuel, tax-free, from its Illinois seller. Tr. p. 10 (stipulation that Taxpayer's license application approved on July 13, 2011); Taxpayer Ex. C; *see also* 35 ILCS 505/6.

Conclusions of Law:

Section 21 of the MFTL incorporates certain provisions of the Retailers' Occupation Tax Act (ROTA), including ROTA § 6b. 35 ILCS 505/21. Section 6b of the ROTA provides that the Department's denial of a taxpayer's claim for credit constitutes prima facie proof that the taxpayer is not entitled to a credit. 35 ILCS 120/6b. The Department offered its Denial into evidence here. Department Ex. 1; Tr. p. 8. The Department's prima facie case is a rebuttable presumption. The presumption is overcome, and the burden shifts back to the Department to prove its case, only after a taxpayer presents evidence that is consistent, probable and closely identified with its books and records, to show that the Department's determinations are wrong. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 156-57, 242 N.E.2d 205, 206-07 (1968); A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 832, 527 N.E.2d 1048, 1052 (1st Dist. 1988).

This dispute involves Taxpayer's request for a refund of Illinois motor fuel tax (MFT) it voluntarily paid to an Illinois vendor when it made purchases of motor fuel in Illinois, on motor fuel that, the Department acknowledges, was not sold by Taxpayer to purchasers or users in Illinois. Taxpayer Exs. B-C; Tr. pp. 8-11. In other words, the Department does not contest that Taxpayer paid MFT that was not due. Tr. pp. 8-11. Whether Taxpayer has a right to a refund of tax erroneously paid to its Illinois vendor depends on the MFTL provision authorizing refunds. *E.g.* Snyderman v. Isaacs, 31 Ill. 2d 192, 194, 201 N.E.2d 106, 107 (1964) ("in the absence of an authoritative statute, taxes voluntarily, though erroneously, paid, cannot be recovered[.]") (*quoting* People ex rel. Eitel v. Lindheimer, 371 Ill. 367, 371, 21 N.E.2d 318, 320, 124 A.L.R. 1472) (internal quotation marks omitted).

During the months at issue, MFTL § 13 provided, in pertinent part:

Sec. 13. Refund of tax paid. Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under

Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid.

Any person who purchases motor fuel in Illinois and uses that motor fuel in another state and that other state imposes a tax on the use of such motor fuel shall be reimbursed and repaid the amount of Illinois tax paid under Section 2 of this Act on the motor fuel used in such other state. Reimbursement and repayment shall be made by the Department upon receipt of adequate proof of taxes directly paid to another state and the amount of motor fuel used in that state.

Claims based in whole or in part on taxes paid to another state shall include (i) a certified copy of the tax return filed with such other state by the claimant; (ii) a copy of either the cancelled check paying the tax due on such return, or a receipt acknowledging payment of the tax due on such tax return; and (iii) such other information as the Department may reasonably require. This paragraph shall not apply to taxes paid on returns filed under Section 13a.3 of this Act.

35 ILCS 505/13 (2010).

The text of the third paragraph of § 13, quoted above, was newly added by P.A. 96-1384, § 5, and became effective July 29, 2010. P.A. 96-1384, § 5 (eff. July 29, 2010). When the Illinois General Assembly added new paragraph three to § 13, it also amended the second sentence in the second paragraph. *Id.* Prior to the effective date of P.A. 96-1384, the second paragraph of § 13 provided:

Any person who purchases motor fuel in Illinois and uses that motor fuel in another state and that other state imposes a tax on the use of such motor fuel shall be reimbursed and repaid the amount of Illinois tax paid under Section 2 of this Act on the motor fuel used in such other state. Reimbursement and repayment shall be made by the Department upon receipt of adequate proof of taxes paid to another state and the amount of motor fuel used in that state.

35 ILCS 505/13 (Smith Hurd ed. 2013 Cumulative Annual Pocket Part) (Historical and Statutory Notes).

By inserting the word “directly[.]” in the second sentence of paragraph two of amended § 13, and adding new paragraph three, the Illinois General Assembly intended to restrict the availability of refunds in cases where a claim for refund is based in whole or in part on taxes paid to another state. 35 ILCS 505/13 (2010). There are three

conditions set forth in the new third paragraph, and those conditions are joined by the word “and.” *Id.* That means that a claimant must satisfy all of the stated conditions to obtain a refund. The first condition is that a claimant must provide “a certified copy of the tax return filed with such other state by the claimant” 35 ILCS 505/13 (2010). The second condition is that the claimant must present “a copy of either the cancelled check paying the tax due on such return, or a receipt acknowledging payment of the tax due on such tax return.” *Id.* Here, however, Taxpayer did not file any returns with Iowa, so it did not pay any tax that was shown due on such a return, for January through June 2011. As the Department correctly argued at hearing (Tr. pp. 14-15), Taxpayer has not directly paid any tax to Iowa.

Based on the plain text of the statute, the Illinois General Assembly intended that, in cases where a claim for refund is based in whole or in part on taxes paid to another state, refunds shall be made only to a claimant who, among other things, has filed a return with, and paid tax to, the state in which the motor fuel was to be sold and/or used. 35 ILCS 505/13 (2010). But Taxpayer paid Iowa tax to its vendor, not directly to the state of Iowa. Taxpayer Ex. B. It would be improper to ignore the plain text of amended § 13. In re County Collector of Kane Co., 132 Ill. 2d 64, 72, 547 N.E.2d 107, 110 (1989) (“a court should not adopt a construction which renders words or phrases in a statute superfluous.”).

Taxpayer’s sole argument at hearing was that the ALJ should treat its Illinois distributor’s license as having been in effect on the day its application was submitted to the Department, instead of on the day the Department issued it. Tr. pp. 6, 13. The request itself is contrary to MTFL § 3, which provides, “No person shall act as a distributor of motor fuel within this State without first securing a license to act as a distributor of motor fuel from the Department.” 35 ILCS 505/3. One does not secure a license merely by applying for one. *See id.*; 86 Ill. Admin. Code § 500.201 (Licensure). Further, a person who has been issued a valid distributor’s license has statutory reporting obligations (35

ILCS 505/5), which Taxpayer has never shown that it undertook during the months at issue. *See* Taxpayer Exs. A-C. Just as importantly, treating Taxpayer as a licensed distributor before its license was secured does not change the fact that it voluntarily paid taxes to its Illinois vendor. Taxpayer Ex. B. If it had been licensed, it could have purchased motor fuel from its Illinois vendor without paying Illinois MFT. *See* 35 ILCS 505/6. But Taxpayer was not an Illinois licensed distributor during January through June of 2011, and it did voluntarily pay MFT to its vendor. Those facts cannot be undone.

Nor, as a practical matter, would treating Taxpayer as having been licensed when it erroneously paid MFT to its Illinois vendor change the plain meaning, or the effect, of MFTL § 13. The statute authorizing refunds in cases where a claim is based in whole or in part on taxes paid to another state is the same for all persons. 35 ILCS 505/13 (2010). The plain text of the statute does not permit a refund under the facts here.

Conclusion:

Under the plain text of MFTL § 13, Taxpayer is not entitled to a refund of tax it voluntarily overpaid in error. 35 ILCS 505/13 (2010); *Isaacs*, 31 Ill. 2d at 194, 201 N.E.2d at 107. I recommend, therefore, that the Director finalize the Department's denial as issued.

June 2, 2014

John E. White
Administrative Law Judge