

MF 08-10

Tax Type: Motor Fuel Use Tax

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.:	08 ST 0000
OF THE STATE OF ILLINOIS)	NTL No.:	00-000000 0
)	Acct. No.:	DP-00000
)		
v.)		Dyed Diesel Violation
)		
JOHN DOE,)		Julie-April Montgomery
Taxpayer.)		Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe *pro se*; Gary Stutland, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

On or about May 14, 2008, the Department of Revenue (“Department”) assessed John Doe (“Taxpayer”) a penalty of \$2,500 alleging the presence of dyed diesel fuel in the fuel tank of Taxpayer’s truck (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. Following the submission of all evidence 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 May 1, 2008, Gary May of the Department inspected Taxpayer’s truck for compliance with the Act. Agent May, with Taxpayer’s consent, retrieved a four (4) ounce sample of fuel from Taxpayer’s semi-truck tractor which was tested on the PetroSpec Dyed Diesel Fuel Analyzer to determine if dyed diesel was present in the tanks. Dept. Gr. Ex. No. 1 (“Activity Report”); Tr. pp. 6 - 8.
2. Agent May’s testing of the truck’s gas tank indicated the presence of dyed diesel fuel at a dye concentration of 4.4 parts per million. Dept. Gr. Ex. No. 1 pp. 5, 6, 9 (“Dyed Diesel Fuel Inspection/Violation Report” and “PetroSpec DT100C” printout); Tr. p. 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..... \$2,500
35 ILCS 505/15.

Subsection (b) of the Department’s regulation concerning civil penalties for dyed diesel fuel violations states that a penalty of \$2,500 shall be imposed if a licensed motor vehicle is found to have dyed diesel fuel within the ordinary fuel tank. 86 Ill. Admin Code Sec. 500.298(b). Subsection (g) of this same regulation provides as follows:

The penalties imposed by subsections (b) and (e) of this Section will be imposed only when the special fuel contains the dye Solvent Red 164 in quantities

greater than .1 part per million. 86 Ill. Admin. Code
Sec. 500.298(g).

The Department presented the testimony of Gary May who conducted the dyed diesel fuel inspection of Taxpayer's truck. May testified that, with Taxpayer's consent, he retrieved a sample of fuel from Taxpayer's truck in which his testing confirmed that 4.4 parts per million of dyed diesel fuel was present. The Department's submission of the Dyed Diesel Fuel Inspection/Violation Report and PetroSpec reading that were entered into evidence support and confirm May's testimony.

Taxpayer had "nothing to say" (tr. p. 26) in response to the Department's case. He presented no evidence, testimonial or documentary. Taxpayer made no arguments on his behalf and did not deny or refute the presence of dyed diesel fuel in the tank of his semi-truck tractor. Taxpayer did not refute the Department's case.

The undisputed evidence establishes that dyed diesel was present in the gas tank of Taxpayer's semi-truck tractor in violation of Illinois law.

WHEREFORE, for the reasons stated above, it is recommended that the \$2,500 penalty be affirmed.

November 10, 2008

Julie-April Montgomery
Administrative Law Judge