

**MF 11-01**

**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  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE**

**Taxpayer**

**Docket # 10-ST-0000**

**Acct ID:**

**Letter ID:**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*

Synopsis:

On October 19, 2010, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying decals as required under section 13a.4 of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*) or without a valid single trip permit pursuant to section 13a.5 of the Act. The taxpayer timely protested the NTL, and an evidentiary hearing was held during which the taxpayer argued that he was not operating a commercial motor vehicle but was

operating a recreational vehicle, which is exempt from the motor fuel use tax. After reviewing the record, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On September 20, 2010, the taxpayer was driving in Illinois a motor home that was towing a trailer. The taxpayer did not have a motor fuel use tax license, decals, temporary permit, or a single trip permit for the trailer. (Dept. Ex. #1, #2; Tr. pp. 5-6, 12-13).
2. The taxpayer was on the way to moving his personal home from Muskego, Wisconsin to Lake Havasu City, Arizona. The trailer contained his personal items, such as a sofa, love seat, tables, chairs, etc. The trailer also contained a “monster truck.” (Dept. Ex. #2; Taxpayer Ex. #1; Tr. pp. 5-6, 13-15)
3. Up until September of 2010, the taxpayer used the monster truck during 2010 to participate in shows 11 different days. The taxpayer drives the truck as a hobby. The taxpayer does not have sponsors for the monster truck. (Dept. Ex. #2; Tr. pp. 14-15)
4. There are no advertisements on the trailer that was attached to the taxpayer’s motor home. The taxpayer does not receive compensation for use of the trailer. (Dept. Ex. #2; Tr. p. 17)
5. On October 19, 2010, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have the appropriate credentials on September 20, 2010. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying decals as required under section 13a.4 of the Act, which 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 an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds..., or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds..., **except for** motor vehicles operated by this State or the United States, **recreational vehicles**, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State..... (emphasis added; 35 ILCS 505/1.16).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried 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 registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (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 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 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 (1<sup>st</sup> Dist.

1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2<sup>nd</sup> Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the taxpayer argues that he does not owe the penalty because he was not operating a commercial motor vehicle. He contends that the trailer that he was towing was a recreational vehicle, which is exempt from the penalty. The agent who stopped the taxpayer on September 20, 2010 issued the citation because he believed that the monster truck was being used for commercial purposes.

Although the Act does not include a definition of recreational vehicle, section 1-169 of the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*) provides the following definition:

Recreational vehicle. Every camping trailer, motor home, mini motor home, travel trailer, truck camper or van camper used primarily for recreational purposes and not used commercially nor owned by a commercial business. (625 ILCS 5/1-169).

The taxpayer's trailer falls within this definition. It is a travel trailer that was used to transport his personal items. The trailer was not used commercially nor owned by a commercial business. The monster truck that was in the trailer was used only a few times during the year and was not used for commercial purposes. The trailer is a recreational vehicle that was not required to have a motor fuel use tax license and was not in violation of the Act.

It is therefore recommended that the Notice of Tax Liability be dismissed.

Linda Olivero  
Administrative Law Judge

Enter: March 18, 2011