

MF 12-02

Tax Type: Motor Fuel Use Tax

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

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN DOE

Taxpayer

Docket # XXXXX
Acct ID: XXXXX
Letter ID: XXXXX

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:

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 appropriate credentials (*i.e.*, valid motor fuel use tax license, Illinois single-trip permit, IFTA temporary permit, or required decals) pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The NTL assesses a penalty of \$1,000. The taxpayer timely protested the NTL, and a hearing was held. During the hearing, the taxpayer argued that the penalty should not be imposed because he had an Iowa trip permit and he did not have a trailer attached to the truck when he was driving through the State of Illinois.

After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On August 11, 2011, the taxpayer was operating a 3-axle, 2007 Freightliner truck in Illinois without a valid motor fuel use tax license. (Dept. Ex. #1; Taxpayer Ex. #1; Tr. p. 9).
2. On August 26, 2011, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have a valid license while operating the vehicle on August 11, 2011. 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 decals pursuant to section 13a.4 of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*), 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.... (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 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., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd 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 the penalty should not be imposed because he had picked up the truck in Iowa and had an Iowa trip permit that he thought would allow him to pass

through Illinois. He indicated that he did not have a trailer attached to the truck when he was driving through Illinois, and he purchased an Illinois single-trip permit when he was stopped by the officer in Illinois.

The taxpayer's arguments, unfortunately, do not warrant a dismissal of the penalty. Under section 1.16 of the Act, the definition of "commercial motor vehicle" includes a truck having 3 or more axles, regardless of weight. The taxpayer admitted that his truck had 3 axles, and the taxpayer's truck is, therefore, required to have a motor fuel use tax license and decals pursuant to section 13a.4 of the Act. The taxpayer's truck still falls within the definition of commercial motor vehicle even though the truck was not pulling a trailer. Because the Iowa trip permit is not an IFTA permit, and the Illinois single-trip permit was not purchased until after the taxpayer was stopped, the taxpayer did not have the appropriate credentials when he was stopped. In addition, the statute does not include a provision that allows for the abatement of the penalty due to reasonable cause. Therefore, the fact that the taxpayer thought he was in compliance with the law does not allow for the abatement of the penalty.

For the foregoing reasons, it is recommended that the Notice of Tax Liability be affirmed in its entirety.

Enter: August 27, 2012

Linda Olivero
Administrative Law Judge