

**MF 12-03**

**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**

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

v.

**JOHN DOE d/b/a ABC BUSINESS  
Taxpayer**

**Docket #      XXXXX  
Acct ID:       XXXXX  
Letter ID:     XXXXX**

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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:

The Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe d/b/a ABC Business ("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 assessed should not be imposed because he followed the laws of the State of Georgia and was told by employees of the Department of Transportation ("DOT") and the Department of Revenue ("DOR") in the State of

Georgia that he did not need any of the credentials. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On August 15, 2011, the taxpayer was operating a 3-axle truck/tractor in Illinois without a valid motor fuel use tax license. (Dept. Ex. #1; Tr. pp. 7, 11).
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 or decals while operating the vehicle on August 15, 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 (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 the penalty should not be imposed because he followed the laws of the State of Georgia and was told by employees of the DOT there that he did not need a license or decals because his truck was pulling a recreational vehicle ("RV"). He said his trailer is titled as an RV. He testified that the only reason why he purchased the truck with the third axle on it was so that he had more braking power for the trailer. He purchased the truck four years ago and has never had a problem with IFTA credentials before, so he thought he was in full compliance with the law. He also said that the trailer contains his personal items because he uses that as his home when he is traveling. The

taxpayer said that in addition to the employees at the DOT, employees at the DOR in the State of Georgia also told him that he did not need IFTA decals. He said he was finally able to obtain the license and decals, so he is currently in compliance with the law.

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 the 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 exception in the definition for RVs would apply if the RV was the only vehicle that the taxpayer was driving. Because the taxpayer used a 3-axle truck to pull his RV, the truck must have the IFTA credentials. 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 received the wrong information concerning the motor fuel license requirements 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.

Linda Olivero  
Administrative Law Judge

Enter: August 27, 2012