

MF 15-01
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
CHICAGO, ILLINOIS**

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

v.

**JOHN DOE,
Taxpayer**

**No. XXXX
Account ID XXXX
Letter ID XXXX
Period 6/24/14**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Matthew Crain on behalf of the Illinois Department of Revenue; JOHN DOE, *pro se*.

Synopsis:

On July 22, 2014, the Illinois Department of Revenue ("Department") issued a Notice of Tax Liability for Illinois Motor Fuel Use Tax to JOHN DOE ("taxpayer"), the operator of a 2000 Country Club motor coach registered to ABC Business, Inc. for operating a commercial motor vehicle in Illinois "without appropriate credentials (*i.e.*, IFTA license, Illinois Single-Trip Permit, 30-day IFTA temporary permit, required decals)." The taxpayer timely protested this Notice of Tax Liability on August 18, 2014.

Prior to the convening of any evidentiary hearing, the parties agreed to certain stipulations, which are enumerated below, and further agreed to forego an evidentiary hearing in this case and to allow it to be decided based upon the stipulated record. After considering the

evidence included in the record, and briefs submitted by the parties, I recommend that this matter be resolved in favor of the Department.

Findings of Fact:

I find the facts to be as stipulated between the parties in the “Stipulation of Facts and Joint Motion for Judgment on Filings” filed April 13, 2015, which are as follows:

1. On June 24, 2014, the taxpayer, Another State resident, was operating a motor coach in Anywhere County, Illinois. Stip. 1. Said coach was registered to ABC Business, Inc. *Id.*
2. On said date, the taxpayer received International Fuel Tax Agreement (“IFTA”) violation #XXXX, dated June 24, 2014, for operating a commercial motor vehicle in Illinois without a valid IFTA decal or single use permit.¹ Stip. 2.
3. On or about July 22, 2014, the Department issued a Notice of Tax Liability for Illinois Motor Fuel Use Tax, Letter ID XXXX to the taxpayer. Stip. 3.
4. On or about August 18, 2014 the taxpayer protested said violation. Stip. 4.
5. The sole issue in this case is whether a recreational vehicle titled to a corporation is being used for a commercial purpose, and thus is required to display a valid IFTA decal or single use permit. Stip. 5.
6. Taxpayer’s protest asserted that the vehicle was a “recreational vehicle” and was being operated for “personal pleasure, as an individual, and not in connection with any business endeavor.” Stip. 6.
7. The taxpayer’s protest reflects its position that a recreational vehicle is not a commercial motor vehicle within the meaning of 625 ILCS 5/111.8 and is therefore exempt from the IFTA decal requirements pursuant to 35 ILCS 505/1.16 regardless of title. Stip. 7.

¹ Illinois imposes a motor fuel use tax on fuels used by interstate commercial motor vehicles. Persons operating qualified motor vehicles interstate are subject to Illinois’ International Fuel Tax Agreement requirements. See Illinois Motor Fuel Use Tax, Carrier Compliance Manual, MFUT-53.

8. The Department's position is that only recreational vehicles not used commercially are exempt from displaying a valid IFTA decal or single use permit. Stip. 8.
9. Commercial vehicle is defined by 625 ILCS 5/1-111.8 as "any vehicle operated for transportation of persons or property in furtherance of any commercial or industrial enterprise, For-Hire or Not-For-Hire, but not including a commuter van, a vehicle used in a ridesharing arrangement being used for that purpose, or a recreational vehicle not being used commercially."

In addition to the foregoing facts, based upon the documentary evidence and admissions contained in the record, I further find as follows:

10. The motor vehicle being driven by the taxpayer was a 3-axle motor home and was pulling a 3 axle trailer. Stip. Ex. 1.
11. The aforementioned motor home and trailer were registered in Happy State. *Id.*
12. On June 24, 2014, the day the citation at issue in this case was issued, the aforementioned motor vehicle was being used in interstate transit for transportation to a family gathering. Stip. Ex. 3.

Conclusions of Law:

The Notice of Tax Liability issued by the Department in the instant case alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without properly displaying "appropriate credentials (i.e., IFTA license, Illinois Single-Trip Permit, 30-day IFTA temporary permit, required decals)" in violation of the Illinois Motor Fuel Tax Act. Department Ex. 1. Section 13a.4 of the Motor Fuel Tax Act (the "Act") (35 ILCS 505/1 *et seq.*) 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.4.²

A “motor carrier” is defined as any person who operates a “commercial motor vehicle” in Illinois. 35 ILCS 505/1.17.

Section 13a.4 of the Act also provides that the required motor fuel tax decals shall be displayed 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 properly displayed decals or without a valid 30 day International Fuel Tax Agreement permit or Single-Trip permit, “the operator is guilty of a petty offense and must pay a minimum of \$75” and “the person required to obtain decals or a permit under sections 13a.4 or 13a.5” of the Act must pay \$1,000 as a penalty for the first offense and \$2,000 for each subsequent offense. 35 ILCS 505/13a.6(a), (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 amount of tax due. 35 ILCS 505/21. The burden shifts to the taxpayer to prove, by sufficient documentary evidence, that the assessment is incorrect once the Department has established its *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991).

In this case, the Department’s *prima facie* case was established when the Department's certified copy of the Notice of Tax Liability was admitted into evidence. In response, the taxpayer admitted that he did not display the required decals on the motor home he was driving. Stip. 3. However, the taxpayer contends that the penalties provided by section 13a.6 of the Act are inapplicable in this case because the motor vehicle alleged to be operating in Illinois without

² Section 13a.5 of the Act provides for an exception for motor carriers holding a Single-Trip Permit. 35 ILCS 505/13a.5.

“appropriate credentials” in violation of section 13a.4 of the Act was not a “commercial motor vehicle.” *Id.*

The term “commercial motor vehicle” as used in section 13a.4 of the Act is defined at 1.16 of the Act, 35 **ILCS** 505/1.16, which provides as follows:

“Commercial motor vehicle” means a motor vehicle used, designed, or maintained for the transportation of persons or property either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,793 kilograms, 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 or 11,793 kilograms gross vehicle weight or registered gross vehicle weight, except for motor vehicles operated by the 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** 505/1.16.³

As is evident from the foregoing, the term “commercial motor vehicle” as used in the Act excludes a “recreational vehicle.” The record indicates that the vehicle the taxpayer was operating, a motor home, was used for the transportation of persons and had three axles, and thus met the threshold requirements for classification as a “commercial motor vehicle.” Stip. Ex. 1. However, the taxpayer argues that the vehicle was designed for the sole purpose of being used as a recreational vehicle and was being used for recreational purposes when it was issued a citation. Stip. Ex. 3. For these reasons, it contends, this vehicle constituted a “recreational vehicle” that is excluded from the definition of “commercial motor vehicle” by section 1.16 of the Act, noted above. Specifically, the taxpayer, citing the Illinois Motor Fuel Use Tax, Carrier Compliance Manual (Illinois Motor Fuel Use Tax, Carrier Compliance Manual, MFUT-53) states as follows:

³ While the “Stipulation of Facts and Joint Motion for Judgment on Filings” reference the definition of “commercial vehicle” under the Illinois Vehicle Code (at section 625 **ILCS** 5/1-111.8) as the applicable law in this case, the foregoing provision is not part of the Act and is not at issue.

On the day of the above mentioned citation, I was personally operating a Recreational Vehicle in your state, while in route to Wisconsin to join in a "Fourth of July Celebration" with Family and Friends. The vehicle was not being used commercially in the state of Illinois. ... On page 3 of the Manual subtitled: Terms and Definitions ... I learned that a qualified motor vehicle is a "commercial motor vehicle" and is used, designed, or maintained for transportation of persons (I assume buses) or property (I assume freight haulers/over the road trucks). On the same page three (3) a Recreational Vehicle is defined as "any vehicle such as motor homes, pickup trucks with attached campers, buses, when used exclusively for personal pleasure by an individual. In order to qualify as recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

After reading the entire Illinois Motor Fuel manual and the manuals of many other states, it is quite clear that the "intent of the law", which I applaud and support, has been to implement and manage a fuel tax distribution system that distributes the massive Motor Fuel Tax Revenues equally, via use proportionality, within all states.

The intent of the IFTA law is not being upheld by fining ordinary citizens using a vehicle for pleasure, not engaged in commercial activity hauling persons or cargo.

Because a vehicle is registered in a business name does not mean it is actively engaged in "business service." Many vehicles have dual business/personal usages. The IRS is aware of this and requires keeping track of business usage miles or depreciation based on a percentage of business usage.

Essentially the taxpayer argues that the type of vehicle the motor home was (i.e. a recreational vehicle rather than a commercial bus or freight hauling truck) and its use for pleasure (transportation to a family gathering) at the time it was ticketed is sufficient evidence to establish that the motor home was a "recreational vehicle" and therefore not a "commercial motor vehicle" as defined at section 1.16 of the Act.

The record in this case indicates that the motor home at issue was registered in Happy State to ABC Business, Inc.. Stip. 1; Stip. Ex. 1. Happy State's vehicle registration requirements apply to motor vehicle owners pursuant to Happy State Code section 61-3-303. Accordingly, I deduce from the registration of this vehicle in the name of ABC Business, Inc. that this vehicle was owned by that company.

The website for ABC Business, Inc. indicates that it is a corporation engaged in selling detergents and other products used to clean and maintain motor cycles. I have included information from this website in the record pursuant to the Illinois Administrative Procedures Act under which Department hearings are conducted. This Act provides that, “[t]he rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed[.] Evidence not admissible under these rules of evidence, may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.” 5 ILCS 100/10-40(a). I also take judicial notice of this information pursuant to Ill. R. Evid. 201.

The Department contends that the term “commercial vehicle” as defined by various Illinois laws expressly excludes the vehicle at issue in the instant case from classification as a “recreational vehicle” because it was owned by a commercial enterprise. In support of this contention, the Department cites section 500.100 (86 Ill. Admin. Code, ch. I, section 500.100) of the Department’s Motor Fuel Tax Act regulations, which provides as follows:

“Recreational vehicle” means vehicles such as motor homes, pickup trucks, with attached campers, camping or travel trailers, van or truck campers, mini motor homes, or buses, used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

(Emphasis added)

86 Ill. Admin. Code, Ch. I, section 500.100

This definition of the term “recreational vehicle” is virtually identical to the definition of this term contained in the Illinois Motor Fuel Use Tax, Carrier Compliance Manual, MFUT-53 which the taxpayer has cited in his protest. Stip. Ex. 3. This manual specifically indicates when compliance with the Act is required and outlines procedures for compliance applicable to the

period in controversy. With respect to requirements for compliance with section 13a.4 of the Act, the manual states as follows:

Failure to Display Motor Fuel Use Tax Decals

On each qualified motor vehicle, you must display two valid motor fuel use tax decals, one properly affixed on each external side of the vehicle ... If you do not display two valid decals, you will be subject to a traffic citation for operating without displaying motor fuel use tax decals. (Emphasis added)

Motor Fuel Use Tax, Carrier Compliance Manual MFUT-53, p. 16.

The manual defines a “qualified motor vehicle” as follows:

For purposes of this manual, a qualified motor vehicle is a “commercial motor vehicle” under the motor fuel tax law. It is a vehicle used, designed, or maintained for transportation of persons or property and either:

- Having two axles and gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,793 kilograms;
- Having three or more axles regardless of weight; or
- Used in combination and the gross vehicle weight or the registered gross vehicle weight of the combined vehicles exceeds 26,000 pounds or 11,793 kilograms.

Qualified motor vehicle exemptions

In Illinois, the following vehicles are not included as “qualified motor vehicles”;

- Motor vehicles operated by the Illinois state government or the United States government,
- Recreational vehicles,
- School buses (must have school bus license plates), and
- Qualified motor vehicles operated solely within Illinois for which all motor fuel is purchased within Illinois.

Motor Fuel Use Tax, Carrier Compliance Manual, MFUT-53, p. 3.

The manual expressly defines the term “recreational vehicle” as used in the foregoing provisions as follows:

Recreational Vehicle

A recreational vehicle means any vehicle, such as motor homes, pickup trucks with attached campers, and buses, when used exclusively for personal pleasure

by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor. (Emphasis added) *Id.*

The Department's regulations, and the Department's Motor Fuel Use Tax, Carrier Compliance Manual quoted above support the Department's conclusion that recreational vehicles "used in connection with a business endeavor" constitute "commercial motor vehicles" under the Act.

In reaching the conclusion that the motor home being driven by the taxpayer in the instant case was being used "in connection with a business endeavor" and therefore classifiable as a "commercial motor vehicle", the Department relied upon circumstantial evidence of business use, namely the fact that the vehicle was registered to ABC Business, Inc. As noted above, ABC Business, Inc. is a commercial enterprise engaged in a business endeavor. Given these facts, it was reasonable for the Department to infer that the recreational vehicle being driven by the taxpayer was acquired for use in a business endeavor because its registered owner was engaged in the conduct of such activity.

Moreover, the *prima facie* correctness of the Department's assessment extends to all elements necessary for its determination that the tax assessed is due (Branson v. Department of Revenue, 168 Ill. 2d 247, 258 (1995)) including its conclusion that the motor home the taxpayer was driving was used in a business. Consequently, the burden of proving that this vehicle was not used in connection with any business endeavor rested squarely with the taxpayer. Mel-Park Drugs, *supra*. However, the record contains no explanation why the motor home the taxpayer was driving was owned by a corporation rather than an individual if its intended use was solely recreational use by an individual. Nor does it contain any documentary evidence of exclusive use by an individual or individuals. Such evidence might have included trip logs showing when and how the vehicle was being used.

For the foregoing reasons, I conclude that the motor home the taxpayer was driving when he was issued a citation on June 24, 2014 was a “commercial motor vehicle” required to comply with section 13a.4 of Act and that the citation issued to this vehicle for failure to display decals as required by section 13a.6 of the Act was warranted by the circumstantial evidence of business ownership and registration of this vehicle.

In his protest (Stip. Ex. 3), the taxpayer contends that the manner in which the motor vehicle was being used at the time the citation in question was issued should be the decisive indicator of whether the vehicle was being used as a “recreational vehicle” exempt from the requirements of section 13a.4 of the Act. When this vehicle was issued a citation, it was being driven in interstate travel to a family gathering in Wisconsin. *Id.*

As noted, in order to be excluded from the definition of “commercial motor vehicle” contained in the Act as a “recreational vehicle” a vehicle must be “used exclusively for personal pleasure by an individual.” 86 Ill. Admin. Code, Ch. I, section 100.500. The clear import of the Department’s Motor Fuel Tax regulation (and identical provisions found in the Motor Fuel Use Tax, Carrier Compliance Manual as noted above) is that the vehicle must be used in a manner that is completely unrelated to any business activity in order to fall outside of the compliance requirements for “commercial motor vehicles” contained in the Act. Accordingly, the mixed use of a vehicle for both commercial and non-commercial purposes, or proof that it was being used for recreational purposes unrelated to any business activity at a particular time is not enough to show that the vehicle was a “recreational vehicle” excluded from the definition of the term “commercial motor vehicle” in section 1.16 of the Act.

In the instant case, it was incumbent upon the taxpayer to prove not only that the vehicle at issue was not being used for commercial purposes at the time it was issued a citation, but also

that it was never used at any time for such purposes. As previously noted, evidence of strictly non-commercial use would include a log of the vehicle's usage showing that it was not being used to transport corporate executives or for similar business related purposes it is conceivable such a vehicle might be used for. No such evidence has been tendered here. For this, and for the other reasons cited above, I find that the taxpayer has failed to rebut the *prima facie* correctness of the Department's determination that the fine at issue should apply in this case.

WHEREFORE, for the reasons stated above, it is recommended that the Notice of Tax Liability at issue in this case be affirmed in its entirety.

Ted Sherrod
Administrative Law Judge

Date: May 22, 2015