

**MF 01-1**

**Tax Type: Motor Fuel Use Tax**

**Issue: Motor Fuel Distributor – 5 Day Revocation**

**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS**

) 00 ST 0000  
) License 0-0000  
) 0-00000

v.

**ABC INTERNATIONAL**

)  
) Mimi Brin  
) Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Bruce Jackson, Bruce B. Jackson & Assoc., Ltd. for ABC International; Shepard Smith, Special Assistant Attorney General for the Illinois Department of Revenue

**Synopsis:**

On June 20, 2000, the Illinois Department of Revenue (“Department”) issued a Notice of License Revocation, RMFT-48-A (“NLR”) to taxpayer, ABC International (“ABC”) based upon ABC’s failure, as a motor fuel distributor and receiver, to file certain returns, pay certain final assessments, and its failure to file required schedules on processable magnetic media. ABC timely protested the NLR and a hearing was held on these issues on January 9, 2001. 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 June 20, 2000, the Department issued to ABC an NLR advising that it would revoke ABC's motor fuel distributor and receiver licenses, 0-0000 and 0-00000, respectively, as a result of ABC's failure to pay certain final assessments, to file a mandated tax return for the March, 2000, and for its failure to file its Illinois Motor Fuel Tax schedule data on processable magnetic media as required. Department Ex. No. 1
2. At hearing, the Department caused to be admitted an updated accounting of the liabilities at issues, with the update, dated January 8, 2001, showing a balance due on outstanding final assessments, and affirming that ABC failed to properly file its motor fuel tax schedule data. Department Ex. No. 2
3. Taxpayer did not present any evidence, either oral or documentary to contest the NLR or the updated analysis of its accounts as a distributor and receiver, and, concedes that it is not in full compliance with the mandates of the Motor Fuel Tax Law, 35 ILCS 505/1 *et seq.* ("MFTL"). Transcript

**Conclusions of Law:**

The NLR issued by the Department states that the taxpayer's distributor and receiver licenses will be revoked pursuant to section 16 of the MFTL, which provides in relevant part as follows:

The Department may, after 5 days' notice, revoke the distributor's, receiver's, supplier's or bulk user's license or permit of any person \* \* \* who violates any provision of this Act or any rule or regulation promulgated by the Department under Section 14 of this Act \* \* \*

35 ILCS 505/16

Section 21 of the MFTL incorporates by reference sections 4 and 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provide that the Department's determination is *prima facie* correct. 35 ILCS 505/21; 120/4, 5. Once the Department establishes its *prima facie* case, the burden shifts to the taxpayer to prove that the Department's determination 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 its record was admitted into evidence. Department Ex. No. 1 In response, ABC presented no evidence, either oral or documentary, showing that the basis of the Department's determination is incorrect. On the contrary, taxpayer's counsel stated, at hearing, that ABC is no longer conducting any business, it has ceased to be an ongoing concern, it is no longer occupying its business premises and it is in the process of liquidating its business assets, if there are any. He further stated that although ABC may file a petition for bankruptcy, it has not as yet done so, thus, there is no legal prohibition against the Department revoking these licenses. ABC neither contests nor rebuts any of the facts maintained by the Department in its NLR, as revised by Department Ex. No. 2.

**WHEREFORE**, for the reasons stated above, ABC is not in compliance with various mandates of the Motor Fuel Tax Law, and, therefore, it is recommended that ABC's distributor license, 0-0000, and its receiver license, 0-00000, be revoked.

1/9/01

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Mimi Brin  
Administrative Law Judge