

MF 18-01

Tax Type: Motor Fuel Tax

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

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

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

v.

XYZ TRANSPORT LLC

Taxpayer

**Docket # XX-ST-XXX
Acct ID: XXXXX-XXXXX
Letter ID:XXXXXXXXXXXXXXXXXX**

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JANE DOE, *pro se*, for XYZ TRANSPORT LLC

Synopsis:

The Department of Revenue ("Department") issued a Notice of Penalty for Motor Fuel Violation ("Notice") to XYZ TRANSPORT LLC ("taxpayer") for motor fuel use tax. The Notice 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 Notice assesses a penalty of \$1,000. The taxpayer timely protested the Notice, and a hearing was held. After

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

FINDINGS OF FACT:

1. On March 3, 2016, the taxpayer was operating a 2007 Freightliner Columbia in Illinois without a valid motor fuel use tax license, Illinois single-trip permit, IFTA temporary permit, or required decals. (Dept. Ex. #1; Tr. pp. 7-10).
2. On April 4, 2016, the Department issued a Notice to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have a valid license, Illinois single-trip permit, IFTA temporary permit, or required decals while operating the vehicle on March 3, 2016. The Notice 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 a valid motor fuel use tax license, Illinois single-trip permit, IFTA temporary permit, or required decals, 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 Notice was admitted into evidence. In response, the taxpayer noted that it is located in Tennessee, and the vehicle was purchased from a

dealer in Illinois. The vehicle was purchased before the taxpayer's business was actually formed, and the taxpayer did not have the opportunity to comply with the IFTA requirements. The taxpayer's owner flew into Chicago to purchase the vehicle, and the dealer told her that all she needed was a Seven-Day Vehicle Permit from the Illinois Secretary of State to allow her to drive to Tennessee. The taxpayer's owner argues that the \$1,000 penalty should not be imposed because she had the drive-away permit from the Illinois Secretary of State to allow her to drive back to Tennessee.

These facts, unfortunately, are not sufficient to abate the penalty in this case. Section 13a.5 of the Act concerns single trip permits and provides, in relevant part, as follows:

As to a commercial motor vehicle operated in Illinois in the course of interstate traffic by a motor carrier not holding a motor fuel use tax license issued under this Act, a single trip permit authorizing operation of such commercial motor vehicle for a single trip into the State of Illinois, through the State of Illinois, or from a point on the border of this State to a point within and return to the border may be issued by the Department or its agents after proper application. . . . 35 ILCS 505/13a.5.

Under this section, "the Department" refers to the Department of Revenue. 35 ILCS 505/1.7. A single-trip permit that may be issued by the Department under this section is different than a drive-away permit issued by the Illinois Secretary of State. Section 3-603 of the Illinois Vehicle Code concerns applications for drive-away permits and provides, in relevant part, as follows:

A dealer who has sold a vehicle of a type otherwise required to be registered under this Act to a nonresident of this State who does not have currently valid registration in his home state, may provide for the operation of such vehicle without registration from the place of sale to the place of destination outside of the State of Illinois, by issuing a drive-away permit in the manner prescribed by the Secretary of State and by affixing the permit to such vehicle in the manner prescribed by the Secretary of State. Any vehicle being operated pursuant to a drive-away permit may

not be used for any other purpose and such permits shall be effective only for a period of 30 days from the date of sale. 625 ILCS 5/3-603 (a).

As this section indicates, a drive-away permit relates to the registration of the vehicle and not IFTA. A taxpayer is presumed to know the law and, therefore, is responsible for failing to be apprised of all applicable legal obligations. See Department of Revenue v. Thomas J. Anderson, 131 Ill. App. 3d 486, 488 (2nd Dist. 1986) (“The defendant is presumed to know the law or, in this case, the change in the law.”). The taxpayer’s failure to comply with the law warrants imposing the penalty.

It is therefore recommended that the Notice of Penalty for Motor Fuel Violation be upheld.

Linda Olivero
Administrative Law Judge

Enter: March 16, 2017