

MF 18-02

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.

JOHN DOE

Taxpayer

} Docket # XX-ST-XXX

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 Penalty for Motor Fuel Violation ("Notice") to JOHN DOE ("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 during which the taxpayer

participated by telephone argued that the penalty should not be imposed because he made several attempts to determine what credentials were needed, and he also believes that the penalty is excessive. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On December 9, 2017, the taxpayer was operating a semi-truck with a cattle trailer in Illinois without a valid motor fuel use tax license. The taxpayer resides in Kentucky. (Dept. Ex. #1; Recording¹).
2. On December 26, 2017, the Department issued a Notice of Penalty for Motor Fuel Violation to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have a valid motor fuel use tax license while operating the vehicle on December 9, 2017. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

The Notice 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).

¹ The hearing was recorded using a digital recorder instead of a court reporter; the citations will be to the recording rather than a transcript.

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 Notice was admitted into evidence. In response, the taxpayer argues that the penalty should not be imposed because he made several attempts to determine whether he needed the motor fuel use tax license and he received different answers. He said that he “made an honest effort” to determine his responsibilities. He also said that he has only one truck and does not travel into Illinois very much. He currently has the IFTA decals even though he is not travelling into Illinois. The taxpayer explained that the whole process has been very frustrating, and if he is required to have the motor fuel use tax license, then he asks that the fine be reduced because he believes it is excessive.

While I sympathize with the taxpayer, the statute unfortunately does not include a provision that allows for the abatement or the reduction of the penalty. The taxpayer did not have the appropriate credentials at the time when the vehicle was stopped, and without a provision in the statute allowing an abatement or reduction, the penalty must be upheld.

It is, therefore, recommended that the Notice of Penalty for Motor Fuel Violation be finalized as issued.

Linda Olivero
Administrative Law Judge

Enter: July 10, 2018