

**MF 18-04**

**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**

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

v.

***JOHN DOE***

**Taxpayer**

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

On August 31, 2017, the Department of Revenue ("Department") issued a Notice of Penalty for Motor Fuel Violation ("Notice") to *JOHN DOE* ("taxpayer") for motor fuel use tax relating to Citation #XXXXX that was issued on June 28, 2017.<sup>1</sup> 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

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<sup>1</sup> The Department initially issued a Notice of Penalty for Motor Fuel Violation to *ABC, INC.*, Letter ID XXXXX, for the same Citation. The taxpayer contacted the Department to inform it that *ABC, INC.* is his

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 argued that the combined weight of his truck and trailer did not exceed the amount required for a commercial motor vehicle. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On June 28, 2017, the taxpayer was operating a Dodge 3500 pickup truck with a trailer in Illinois without a valid motor fuel use tax license. (Dept. Ex. #1; Recording<sup>2</sup>)
2. On June 28, 2017, an officer with the Illinois Commerce Commission issued an Administrative Citation #XXXX to the taxpayer for failing to display a motor fuel use tax license. The officer completed a Motor Fuel Use Tax Violation Referral that indicates that the truck's registered weight was 26,000 pounds and the trailer's registered weight was 14,000 pounds. (Dept. Ex. #1, pp. 6-7)
3. On August 31, 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 license while operating the truck and trailer on June 28, 2017. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)
4. On October 30, 2017, the actual combined empty weight of the taxpayer's truck and trailer was 14,660 pounds. (Taxpayer Ex. #1, p. 1; Recording)

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brother's business, and the Citation is not related to *ABC, INC.* (Dept. Ex. #1, p. 5) The Department then issued the Notice of Penalty for Motor Fuel Violation to the taxpayer, Letter ID XXXXX.

<sup>2</sup> The hearing was recorded using a digital recorder instead of a court reporter; the citations will be to the recording rather than a transcript.

5. The 2018 Illinois Registration Identification Cards show a registered weight of 16,000 pounds for the truck and 14,000 pounds for the trailer, which totals 30,000 pounds. (Taxpayer Ex. #1, pp. 2-3; Recording)

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).

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 or 11,793 kilograms gross vehicle weight or registered gross vehicle weight*, 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 Notice was admitted into evidence. In response, the taxpayer argues that his understanding is that as long as the actual empty weight of his vehicles totals less than 16,001 pounds, he is not required to have a motor fuel use tax license. The actual combined empty weight of the taxpayer's truck and trailer is 14,660 pounds, so the taxpayer believes that he does not need a motor fuel use tax license.

With respect to the registered weight, the taxpayer stated that when he purchased the truck, the dealership put the wrong plates on it, which is why the truck's plates were registered for 26,000 pounds as the officer indicated on the Citation. The taxpayer testified that the sticker on the door to the truck shows that the registered weight for the

truck is 14,000 pounds. At the time of the hearing, the taxpayer did not provide a photo of the sticker on the truck's door.

The taxpayer admitted that the 2018 Illinois Registration Identification Cards show a registered weight of 16,000 pounds for the truck and 14,000 pounds for the trailer, which exceeds the 26,000 pound requirement for the motor fuel use tax license. The taxpayer testified that the registered weight should be 14,000 pounds for the truck and 12,000 pounds for the trailer, which equals 26,000 pounds and would exempt the vehicles from the motor fuel use tax license requirement. He said that when he registered the vehicles, they were put in a group weight of 14,000 to 16,000 for the truck and 12,000 to 14,000 for the trailer. The taxpayer said that he went to the driver's license facility to see if he could have these amounts changed, and he was told he could not. The taxpayer contends that if he could have the vehicles registered for the correct amounts of 14,000 and 12,000 pounds, then he would not need the motor fuel use tax license.

Subsequent to the hearing, the taxpayer was given the opportunity to present documentary evidence to show that the combined registered weight of the vehicles does not exceed 26,000 pounds. The taxpayer submitted two photographs that were not identified. The first photograph shows a metal plate on a vehicle, but the VIN on the plate does not match the VIN for either the truck or the trailer as shown on the Illinois Registration Identification Cards. The GVWR (gross vehicle weight rating) on this first photograph is not exactly clear, and it appears to be either 16,000 or 14,000 pounds. The second photograph appears to be the sticker on a truck door, which shows a GVWR of 14,000 pounds.

The taxpayer's photographs and arguments do not support abating the penalty. Under the Act, a "commercial motor vehicle" includes a vehicle "that is used in combination, when the weight of the combination exceeds 26,000 pounds ... gross vehicle weight *or* registered gross vehicle weight." (emphasis added; 35 ILCS 505/1.16) The taxpayer provided evidence that the *actual* combined gross weight of the truck and trailer did not exceed 26,000 pounds. (Taxpayer Ex. #1, p. 1) The taxpayer did not, however, provide documentary evidence to overcome the Department's evidence to show that the *registered* combined gross weight of the truck and trailer does not exceed 26,000 pounds. The 2018 Illinois Registration Identification Cards show a registered weight that exceeds the 26,000 pound requirement. The unidentified photographs submitted by the taxpayer after the hearing show registered weights that, when combined, exceed 26,000 pounds, and the VIN on one of the photographs does not match the VIN on the vehicles at issue. Nevertheless, the combined registered weight of the vehicles exceeds 26,000 pounds, which requires the penalty to be upheld.

It is therefore recommended that the Notice of Penalty for Motor Fuel Violation be affirmed in its entirety.

Enter: October 5, 2018

Linda Olivero  
Administrative Law Judge