

MF 18-06

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.

ABC, INC.

Taxpayer

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

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; *JOHN DOE, pro se*, for *ABC, INC.*

Synopsis:

The Department of Revenue ("Department") issued a Notice of Penalty for Motor Fuel Violation ("Notice") to *ABC, INC.* ("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 and argued that the penalty should not be imposed because the

driver of the vehicle mistakenly entered Illinois when he was near the border of Missouri. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On December 18, 2017, the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license. (Dept. Ex. #1, pp. 2, 4).
2. On January 18, 2018, 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 18, 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).

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 it does 99.9% of its work in Missouri, and it has local plates on the

truck. The taxpayer claims that the driver of the vehicle at the time of the violation was a part-time driver, and he mistakenly drove into Illinois, right off of Interstate 64. Before he could turn around and get back into Missouri, he was stopped by a Fairview Heights police officer. The taxpayer's president testified that whenever they go into Illinois, they always get trip and fuel permits ahead of time. Subsequent to the hearing, the taxpayer was given the opportunity to present some type of documentary evidence, such as a bill of lading or invoice, to substantiate its claim that the driver was not supposed to be in Illinois at the time he was stopped. The taxpayer was unable to substantiate the claim. Unfortunately for the taxpayer, 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: October 11, 2018