

MF 01-18
Tax Type: Motor Fuel Use Tax
Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
v.)	Docket No. 01-ST-0000
ABC FUEL, INC.)	Acct # 00-00000
)	NTL # 00-000000 0
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; William C. Conner of The Leiter Group for ABC FUEL, Inc.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Penalty for Motor Fuel Tax (“Notice”) to ABC FUEL, Inc. (“taxpayer”). The Notice was issued for failing to display a notice on the taxpayer’s invoices according to section 4e of the Motor Fuel Tax Law (35 ILCS 505/1 *et seq.*). The taxpayer timely protested the Notice. The parties filed a Joint Stipulation of Facts and supporting briefs and asked that this matter be decided based on their written submissions. The sole issue presented is whether the taxpayer’s invoices accompanied the sale of dyed diesel fuel, which would activate the notice requirement of section 4e. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. During 2000, the taxpayer provided its purchasers with three documents concerning the sale of its dyed diesel fuel. The first document was a bill of lading that was provided to the customer at the delivery terminal when the fuel was delivered. The second document was an invoice that was faxed to the customer at a time and place “somewhat remote and removed from the actual fuel transfer.” The third

document was a delivery ticket that was marked “paid” and was mailed to the customer when the taxpayer received payment. (Stipulation #1)

2. On May 24, 2000, the taxpayer prepared an invoice for the sale of dyed diesel fuel. The invoice did not include a statement regarding the nontaxable use of the dyed diesel fuel, such as the following: “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use.” (Stipulation #1)

3. The invoice in question was mailed after and remote from the actual delivery of the fuel. When the fuel was delivered, the taxpayer provided the customer with a bill of lading that contained a notice concerning the nontaxable use of dyed diesel fuel. The taxpayer also mailed the customer a delivery ticket that included the notice. (Stipulation #3)

4. On January 12, 2001, the Department issued to the taxpayer a Notice of Penalty for Motor Fuel Tax, which assessed a \$500 penalty for failing to display the notice “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use,” on its invoices. (Stipulation #2)

CONCLUSIONS OF LAW:

Section 4e of the Motor Fuel Tax Law provides as follows:

“A legible and conspicuous notice stating “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use” must appear on all shipping papers, bills of lading, and invoices accompanying any sale of dyed diesel fuel.” (35 ILCS 505/4e)

Subsection 13 of Section 15 of the Motor Fuel Tax Law provides in part as follows:

“13. Any person who sells or transports dyed diesel fuel without the notice required by Section 4e shall pay the following penalty:
First occurrence.....\$ 500
Second and each occurrence thereafter.....\$1,000” (35 ILCS 505/15)

The Department imposed the \$500 penalty because the invoice that the taxpayer prepared and sent to the purchaser did not include the notice as stated in section 4e.

The taxpayer contends that two of the three documents that were prepared in connection with the sale contained the appropriate language, and the omission on the third document was unintentional. The taxpayer claims that the “spirit” of the law was met because the person who actually took delivery of the fuel had notice that the fuel was for non-taxable use only. The taxpayer argues that because the buyer had the notice on two of the documents, there was no danger that the buyer misunderstood the nature of the fuel. Therefore, the purpose of the law was satisfied, and the penalty should be waived.

The Department argues that the statutory notice requirement becomes effective whenever a document is prepared in association with a sale. The Department notes that Blacks Law Dictionary, 5th Edition, defines “accompany” as “To go along with. To go with or attend as a companion or associate; to occur in association with.” The Department claims that an invoice prepared for the purpose of billing a customer is an invoice “in association with” the sale; therefore it accompanies the sale and must include the notice language. The Department states that nothing in the statute indicates that there must be physical proximity to the sale before the notice is required. In addition, the fact that the omission may have been inadvertent does not change the fact that the penalty must be imposed. The Department believes that there is no discretion allowed for the abatement of the penalty.

The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature. Board of Trustees of Southern Illinois University v. Department of Human Rights, 159 Ill.2d 206, 211 (1994). “Interpretation of a statute must be grounded on the nature and the object of the statute as well as the consequences which would result from construing it one way or another.” Illinois Power Co. v. Johnson, 116 Ill.App.3d 618, 626-27 (4th Dist. 1983). Taxing statutes should be construed so that they are given a reasonable and common sense meaning. Id. at 629.

A reasonable interpretation of the statute at issue would be that the term “accompanying” includes invoices prepared in association with a sale, and the taxpayer’s invoice should have had the notice on it. The statute specifically refers to “all shipping papers, bills of lading, and invoices accompanying any sale of dyed diesel fuel.” (35 ILCS 505/4e) Nothing in the statute limits the relevant invoices to ones issued at the delivery site. To the contrary, the only restriction is that the invoice “accompany” the sale. The invoice in question accompanied the sale because it was prepared in association with it. Even though the invoice was mailed after the delivery of the fuel, there is no dispute that it relates to the sale of dyed diesel fuel and was prepared in connection with the sale. The fact that the taxpayer had other documents with the notice on it does not change the finding that the invoice needed it as well because the statute requires the notice on “all” documents that accompany the sale.

In addition, the statute does not allow for an abatement of the penalty if the taxpayer shows reasonable cause for not complying with the statute. Even though the taxpayer may have unintentionally

omitted the language from its invoices, the penalty must still be imposed for the failure to have the notice on the invoices.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Penalty be upheld.

Linda Olivero
Administrative Law Judge

Enter: July 26, 2001