

MF 06-3

Tax Type: Motor Fuel Use Tax

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

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket # 00-ST-0000
v.)	Acct # 00-00000
)	NTL # 00-00000000
ABC MOVING & STORAGE/JOHN DOE)	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Edward D. McNamara, Jr. of McNamara & Evans for ABC Moving & Storage/*John Doe*.

Synopsis:

On September 24, 2004, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to ABC Moving & Storage/*John Doe* ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying required decals pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The taxpayer timely protested the NTL, and a hearing was held during which the taxpayer argued that the Department did not establish a *prima facie* case of a

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

FINDINGS OF FACT:

1. On July 28, 2004, the taxpayer was operating a truck in Illinois without a valid motor fuel use tax license and without displaying valid motor fuel use tax decals. (Dept. Ex. #1, #2).

2. On September 24, 2004, the Department issued NTL number 37-451639 P to the taxpayer showing a penalty due of \$1,000 for failure to have a valid license and without properly displaying the required decals while operating the vehicle on July 28, 2004. The NTL 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 without properly displaying required 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.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 ("ROTA") (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 NTL was admitted into evidence. In response, the taxpayer admits that viewing the evidence presented "in a manner most favorable to the Department, the evidence would show that Taxpayer on the date in question, failed to display a valid Motor Fuel Use Tax license, and failed to display valid Motor Fuel Use Tax decal." (Taxpayer brief p. 1, #4) The taxpayer contends, however, that the term "*prima facie*" is found in sections 5 and 5a of the Act, and these provisions are not relevant with regard to the evidence in this case. The taxpayer believes that the Department's evidence has not established a *prima facie* case.

Section 21 of the Act states that various sections of the ROTA "shall apply as far as practicable to the subject matter of this Act to the same extent as if those provisions were included in this Act." 35 ILCS 505/21. Section 5 of the ROTA provides that in the event of a failure to file a return, the Department shall determine the amount of tax due according to its best judgment and information, "which amount so fixed by the

Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination.” 35 ILCS 120/5.

It further states as follows:

Proof of such determination by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy or computer print-out of the Department's record relating thereto in the name of the Department under the certificate of the Director of Revenue. If reproduced copies of the Department's records are offered as proof of such determination, the Director must certify that those copies are true and exact copies of records on file with the Department. If computer print-outs of the Department's records are offered as proof of such determination, the Director must certify that those computer print-outs are true and exact representations of records properly entered into standard electronic computing equipment, in the regular course of the Department's business, at or reasonably near the time of the occurrence of the facts recorded, from trustworthy and reliable information. Such certified reproduced copy or certified computer print-out shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein. 35 ILCS 120/5.

The certified copy of the NTL established the Department's *prima facie* case, and the taxpayer has not presented any evidence to overcome it. The Notice of Tax Liability must therefore be upheld.

Linda Olivero
Administrative Law Judge

Enter: January 5, 2006