

MF 08-1

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**

v.

ABC HAULING, INC.; JAMES G. DOE, JR.,

Taxpayers

**Docket # 07-ST-0000
Acct # 00-00000
NTL # 00-000000 0**

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE, Jr., *pro se*, for ABC Hauling, Inc.

Synopsis:

On July 10, 2007, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to ABC Hauling, Inc./JOHN DOE, Jr. ("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 pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The taxpayer timely protested the NTL, and an evidentiary hearing was held. During the hearing, the taxpayer argued that the penalty should be dismissed because he mistakenly entered into Illinois from Missouri and did

not intend to drive in Illinois. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On June 27, 2007 at approximately 9:10 a.m., the taxpayer was stopped for operating a 3 axle dump truck in Illinois without a valid motor fuel use tax license. (Dept. Ex. #1, p. 2).
2. On July 10, 2007, the Department issued NTL number 37-487329 P to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failing to have a valid license while operating the vehicle on June 27, 2007. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).
3. The taxpayer admitted that he did not have a valid license for the vehicle on June 27, 2007. (Tr. p. 8).

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 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. 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 NTL was admitted into evidence. In response, the taxpayer argues that although he was in Illinois without the proper permits, he did not intend to travel in Illinois. He claims that he had picked up a load of rock in Fenton, Missouri and intended to deliver it on Telegraph Road, which is in Missouri near the Illinois border. He said that due to the construction in the area, he got lost, took the wrong exit, and ended up crossing the Illinois border on Interstate 255. He took the first exit in Illinois, which he hoped would cloverleaf and allow him to go back to Missouri. Instead, it veered south, and he was then stopped by an agent from the Department's

Bureau of Criminal Investigations. He said that he does not have a motor fuel use tax license or IFTA stickers because his business is only conducted in Missouri.

In support of his argument that he did not intend to be in Illinois, the taxpayer presented a copy of a weight ticket showing he purchased gravel in Missouri at 8:42 a.m. on June 27, 2007, which was approximately a half hour before he was stopped by the agent. (Taxpayer Ex. #1) During his testimony, the taxpayer stated that the weight ticket “show[s] the destination as well.” (Tr. p. 10) Unfortunately, the weight ticket does not actually indicate the destination. The weight ticket has a space above the signature of the driver that states “Deliver To,” but this portion of the weight ticket was not completed.

As mentioned previously, once the Department has established its *prima facie* case, the taxpayer must present documentary evidence to show that the Department’s determination is incorrect. The weight ticket does not verify that the taxpayer’s destination was Missouri, and the taxpayer did not present other documents, such as the invoice for the Missouri customer who received the rock, to corroborate his claim. Without substantiating documentary evidence, it cannot be found that the taxpayer has overcome the Department’s *prima facie* case.

It is therefore recommended that the Notice of Tax Liability be upheld.

Linda Olivero
Administrative Law Judge

Enter: January 7, 2008