

MF 09-1

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
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	No.:	08 ST 0000
OF THE STATE OF ILLINOIS)	NTL No.:	00-000000 0
)	Acct. No.:	00-00000
)		
v.)	Dyed Diesel Violation	
)		
JOHN DOE,)	Julie-April Montgomery	
Taxpayer.)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe *pro se*; Gary Stutland, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

On March 19, 2008, the Department of Revenue (“Department”) assessed John Doe (“Taxpayer”) a penalty of \$2,500 alleging the presence of dyed diesel fuel in the fuel tank of the truck he was driving (Dept. Gr. Ex. No. 1) in violation of the Motor Fuel Tax Act (“Act”). 35 ILCS 505/1 *et seq.* Taxpayer made a timely protest of this matter. A hearing was held during which the Taxpayer presented only testimonial evidence. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. On March 3, 2008, Gary May of the Department inspected the 1987 GMC semi-truck tractor Taxpayer was driving for compliance with the Act. Agent May, with Taxpayer's consent, retrieved a four (4) ounce sample of fuel from the truck Taxpayer was driving which was tested on the PetroSpec Dyed Diesel Fuel Analyzer to determine if dyed diesel was present in the tank. Dept. Gr. Ex. No. 1 ("Activity Report"; "Dyed Diesel Fuel Inspection/Sample Receipt"); Tr. pp. 11-12, 17, 25.
2. Agent May's testing of the truck's gas tank indicated the presence of dyed diesel fuel at a dye concentration of 10.9 parts per million. Dept. Gr. Ex. No. 1 ("Dyed Diesel Fuel Inspection/Violation Report"); Tr. pp. 12, 17.

Conclusions of Law:

Paragraph 15 of section 15 of the Act provides in relevant part as follows:

If a motor vehicle required to be registered for highway purposes is found to have dyed diesel fuel within the ordinary fuel tanks attached to the motor vehicle..., the operator shall pay the following penalty:

First occurrence..... \$2,500
35 ILCS 505/15.

The Department's regulation concerning civil penalties for dyed diesel fuel violations states that a penalty of \$2,500 shall be imposed if a licensed motor vehicle is found to have dyed diesel fuel within the ordinary fuel tank. 86 Ill. Admin Code Sec. 500.298(b).

Subsection (g) of this same regulation provides as follows:

The penalties imposed by subsections (b) and (e) of this Section will be imposed only when the special fuel contains the dye Solvent Red 164 in quantities greater than .1 part per million. 86 Ill. Admin. Code Sec. 500.298(g).

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 owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 505/21; 120/5. Once the Department establishes its *prima facie* case, the burden of proof shifts to the taxpayer to prove, by sufficient documentary evidence, that the penalty assessed is incorrect. Mel-Park Drugs, Inc. 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 the present case, the Department's *prima facie* case was established when the Department's certified copy of the Notice was admitted into evidence. Once the Notice was admitted into evidence, the Department's position is legally presumed to be correct. In addition, the Department presented the testimony and reports of Gary May that, with Taxpayer's consent, he retrieved a sample of fuel from the truck operated by Taxpayer in which his testing confirmed that 10.9 parts per million of dyed diesel fuel was present.

In response to the Department's case Taxpayer testified that "everything [May]...basically said is pretty much accurate." Tr. p. 17. Taxpayer presented no documentary evidence to rebut or refute the Department's *prima facie* case. Rather, Taxpayer's testimony confirmed the presence of dyed diesel fuel. In addition, Taxpayer admitted that he understood that being the driver of a truck with dyed diesel fuel in the tank subjected him to the penalty assessed by the Department. Tr. p. 26.

The evidence of the parties clearly establishes that dyed diesel was present in the gas tank of the semi-truck tractor driven by Taxpayer in violation of Illinois law.

WHEREFORE, for the reasons stated above, it is recommended that the \$2,500 penalty be affirmed.

February 10, 2009

Julie-April Montgomery
Administrative Law Judge