

MF 09-4

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

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THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

JOHN DOE,  
Taxpayer,

Docket No.: 08-ST-0000

Account No.: 000000

NTL No.:

Julie-April Montgomery  
Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

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

**Synopsis:**

On October 7, 2008, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe ("Taxpayer") for motor fuel use tax. The NTL alleged that on September 22, 2008 Taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying decals as required under section 13a.4 of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*) or without a valid single trip permit pursuant to section 13a.5 of the Act. Taxpayer timely protested the NTL. At the hearing held on June 23, 2009 Taxpayer testified but presented no documents on his behalf. After 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, are made the following findings of fact and conclusions of law:

**Findings of Fact:**

1. On September 22, 2008, Taxpayer was stopped at a motor fuel checkpoint, located on Illinois Route 26, at the Illinois - Wisconsin border and given a written warning for driving a truck and trailer that had a combined weight of 28,000 pounds upon an Illinois highway without either a valid Motor Fuel Use Tax License or Illinois single trip permit. Dept. Gr. Ex. No. 1 (“Motor Fuel Use Tax Violation Report” and “Written Warning”); Tr. pp. 7-10.
2. On October 7, 2008, the Department assessed a \$1,000 penalty against Taxpayer. The penalty notice, or NTL, was admitted into evidence under the certification of the Director of the Department. Dept. Gr. Ex. No. 1 (“Notice of Tax Liability”); Tr. p. 13.

**Conclusions of Law:**

The NTL issued by the Department alleged 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 Act, which provides in part:

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 (b) of the Act states that if a commercial motor vehicle is found to be operating in Illinois without a valid motor fuel use tax license and without properly displayed decals or without a valid single trip permit, 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 for the first offense. 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 the present case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. Once the NTL was admitted into evidence, the Department's position is legally presumed to be correct.

In response, Taxpayer presented no documentary evidence. In fact, Taxpayer admitted that he did not have the proper credentials but he would "correct the problem"

(tr. p.14) at the end of June 2009. Tr. pp. 15, 17. Taxpayer also admitted that he understood that he “was in violation.” Tr. p. 14. Taxpayer stated that he sought “forgive [ness] of the penalty.” Tr. p. 18. Taxpayer contended further that because the truck used was his personal truck (tr. p. 11) and he would “correct this issue by downgrading the weight on the vehicle ... [so] the truck and trailer would not need to have an IFTA sticker” (tr. p. 14) he should not be assessed the penalty, especially in light of the fact that he had received a warning. *Id.* Taxpayer reasoned that because the “issue of the weight [was] so close ... and ... [he] had told the officer [at the checkpoint] and the Court [he would] correct that problem, and ... it is not a revenue generating vehicle ... the Court [should] forgive the penalty based on the warning.” Tr. pp. 17-18.

By his own admission, there is no issue as to whether Taxpayer operated a commercial motor vehicle in Illinois without the necessary license, decal or single trip permit. The Act does not contain an exception that allows a waiver of the penalty for any mitigating circumstances, like the erroneous belief that a written warning prohibits assessment of the penalty. Moreover, Taxpayer’s promise, both on the date of the incident (9 months ago) and at the hearing, to correct an admitted violation is not a basis for waiver of the penalty. Taxpayer failed to have the license, decal or permit on the day in question.

**WHEREFORE**, for the reasons stated above, it is recommended that the Notice of Tax Liability be affirmed.

Julie-April Montgomery  
Administrative Law Judge

Enter: July 28, 2009