

MF 10-01

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

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

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

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe, General Manager, on behalf of ABC of Illinois, Inc.; Gary Stutland, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue.

Synopsis:

On October 14, 2008, the Department of Revenue (“Department”) issued a Notice of Penalty for Dyed Diesel Fuel Violation (“Notice”) to ABC of Illinois, Inc. (“Taxpayer”). The Notice alleged Taxpayer had dyed diesel fuel in the fuel tank of the tractor it owned in violation of the Motor Fuel Tax Act (“Act”) (35 ILCS 505/1 *et seq.*) and assessed a penalty of \$2,500. Taxpayer timely protested this matter and requested a hearing. A hearing was held on January 15, 2010 where Taxpayer presented testimony and the Department presented documentary 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, are made the following findings of fact and conclusions of law.

Findings of Fact:

1. On September 24, 2008, the Department inspected Taxpayer’s 1992 Kenworth tractor that Taxpayer had parked upon its property for compliance with the Act. Dept. Gr. Ex. No. 2 (Dyed Diesel Fuel Inspection/Violation Report; Diesel Fuel Dye Analyzer Sample Receipt); Tr. pp. 10, 20.
2. The inspection revealed the presence of dyed diesel fuel at a dye concentration of 12.7 parts per million in the tractor’s fuel tank. Dept. Gr. Ex. No. 2.
3. The tractor bore an Illinois license plate. Dept. Gr. Ex. 2 (Dyed Diesel Fuel Inspection/Violation Report; picture of tractor exhibiting license plate); Tr. pp. 13-14, 19, 41.
4. The tractor was owned by Taxpayer. Tr. p. 20.
5. The tractor was inspected on Taxpayer’s lot and was under Taxpayer’s control. *Id.*
6. On October 14, 2008, the Department issued its Notice that showed a penalty due of \$2,500 for Taxpayer’s “licensed motor vehicle that had dyed diesel fuel within the ordinary attached fuel tank.” Dept. Gr. Ex. No. 2 (Notice of Penalty for Dyed Diesel Fuel Violation).

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.

Further, the Department's regulation concerning civil penalties for dyed diesel fuel violations states that a penalty of \$2,500 shall be imposed upon the operator 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 (a) of this same regulation provides as follows:

“Operator” means the person who has physical control over a motor vehicle....When a motor vehicle is not under the control of a driver, the operator will be the person that has physical control over that vehicle. For instance, if a truck parked on company property is found to have dyed diesel fuel in its tanks, a penalty will be issued to the company. 86 Ill. Admin. Code Sec. 500.298(a).

Subsection (g) of this regulation also provides that:

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 its Dyed Diesel Fuel Inspection/Violation Report and Diesel Fuel Dye Analyzer Sample Receipt which documented the Department's finding that 12.7 parts per million of dyed diesel fuel was present in the tractor's fuel tank.

In response to the Department's case, Taxpayer alleged the tractor was not in use because it was not roadworthy, and as such, the tractor was in an area of Taxpayer's property utilized for abandoned property. Tr. pp. 13-15, 21-25, 32. However, Taxpayer presented no mechanic's report, salvage certificate or junking certificate to support this claim.

Taxpayer also alleged that the tractor's license had not been renewed and that the Illinois license plate on the vehicle was placed there by mistake by an inexperienced employee. Tr. pp. 13-14, 21-25, 32. Again, no documentation was posited in support of this allegation.

Taxpayer presented no documentary evidence to rebut or refute the Department's *prima facie* case. Rather, Taxpayer's testimony admitted that the tractor's fuel tank contained dyed diesel fuel. Tr. pp. 31.

The evidence of the parties clearly establishes that dyed diesel fuel was present in the fuel tank of the tractor owned by and under the control of Taxpayer in violation of the Act.

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

March 5, 2010

Julie-April Montgomery
Administrative Law Judge