

**MF 11-02**

**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**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE**

**Taxpayer**

**Docket #  
Acct #  
Letter ID #**

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**RECOMMENDATION FOR DISPOSITION**

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

Synopsis:

On November 12, 2010, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without appropriate credentials (*i.e.*, valid motor fuel use tax license, single-trip permit, or required decals). The taxpayer timely protested the NTL, and an evidentiary hearing was held. During the hearing, the taxpayer argued that the NTL should be dismissed because the vehicle he was driving was not a commercial motor vehicle within the meaning of the Motor Fuel Tax Act (35 ILCS 505/1 *et seq.*). After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On October 25, 2010, the taxpayer was operating a 1990 Peterbilt in Illinois without a valid motor fuel use tax license, decals, or single trip permit. (Dept. Ex. #1; Tr. pp. 15, 18).
2. The trailer has 3 single axles. The vehicle weighs over 36,000 pounds. (Dept. Ex. #1; Tr. pp. 21-23)
3. The back of the trailer can carry two stock cars. The taxpayer's sons race stock cars, and the vehicle is used to transport the stock cars. The vehicle is also used as living quarters when at the race track. (Taxpayer Ex. #1; Tr. pp. 7, 20-21)
4. On November 12, 2010, the Department issued a Notice of Tax Liability to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have a valid license, decals, or single trip permit while operating the vehicle on October 25, 2010. 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 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). 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*.... (emphasis added; 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 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 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 has established its *prima facie* case, the burden shifts to the taxpayer to prove that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1<sup>st</sup> Dist. 1991); Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4<sup>th</sup> Dist. 1990); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2<sup>nd</sup> Dist. 1978). To prove his case, a taxpayer must present more than his testimony denying the Department's assessment. *Id.* The taxpayer must present sufficient documentary evidence to support his claim. *Id.*; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1<sup>st</sup> Dist. 1981).

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. In response, the taxpayer

argues that the vehicle is not a commercial motor vehicle because it is used solely within the State of Illinois, and it is also a recreational vehicle. The taxpayer claims that the vehicle was purchased in Florida<sup>1</sup> but now that the vehicle is in Illinois it will not leave Illinois. The taxpayer contends that he goes to race tracks within Illinois, and because the vehicle will only be used within the State of Illinois, the taxpayer claims that it is not a commercial motor vehicle. The taxpayer also argues that the vehicle is a recreational vehicle because the inside of the trailer has all the features of a recreational vehicle. The trailer has a microwave, refrigerator, sink, lights, sleeping area, and bathroom, and the taxpayer lives in the trailer when it is at the race track. The taxpayer, therefore, argues that the penalty should not be assessed.

In order to overcome the Department's *prima facie* case, the taxpayer must present sufficient documentary evidence to support his claim. *Id.* The taxpayer testified during the hearing that he did not have any records or mileage logs for the vehicle to verify that all the travel was within Illinois. (Tr. p. 17) In order to substantiate the claim that the vehicle is operated solely within this State, the taxpayer must present documentary evidence to support this. Without any records or log books to show that the vehicle is used solely in Illinois, the penalty cannot be dismissed on this basis.

The taxpayer's argument that the vehicle is a recreational vehicle also fails because the taxpayer did not present sufficient evidence to show that the vehicle is not used for commercial purposes. The taxpayer admitted that the trailer is used to transport stock cars that are raced by his sons. The taxpayer claims that his sons race the stock cars as amateurs, and it is only a sport that they do for fun. The taxpayer contends that he does not profit from the use of the vehicle. The taxpayer, however, did not provide any evidence to substantiate this claim. The Department's regulation defines recreational vehicle as follows:

“Recreational vehicle” means vehicles, such as motor homes, pickup trucks with attached campers, camping or travel trailers, van or truck campers, mini motor

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<sup>1</sup> When the vehicle was stopped on October 25, 2010, it had Florida license plates on it that were from the previous owner. (Dept. Ex. #1; Tr. p. 16) The taxpayer had purchased the vehicle the day before he was stopped. (Tr. p. 15)

homes, or buses, used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor. 86 Ill. Admin. Code §500.100

Because stock cars are usually raced for business or commercial purposes, the taxpayer bears the burden of proving that the stock cars are not used for business purposes. The taxpayer did not provide any evidence to verify that the events that the cars raced in were for amateurs only and did not result in a profit. Without substantiation that the cars are not used for profit, it cannot be found that the vehicle is solely used as a recreational vehicle.

It is therefore recommended that the Notice of Tax Liability be affirmed in its entirety.

Linda Olivero  
Administrative Law Judge

Enter: May 13, 2011