

ST 11-11

Tax Type: Sales 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 BUSINESS

Taxpayer

Docket # XXXXXX
Acct # 00000000
Letter ID # XXXXXX

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

On September 24, 2010, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to ABC Business ("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. The parties filed a Stipulation of Facts and waived their right to an evidentiary hearing, requesting that this matter be resolved based on the documents submitted. In the documents, the taxpayer argues that the NTL should be dismissed because the vehicle that was stopped was a recreational vehicle and 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 August 23, 2010, the taxpayer's representative was operating a 2006 Prevost DE-4500 motor coach in Illinois. The taxpayer owns the vehicle. (Joint Stip. #1; Ex. #2)
2. On August 23, 2010, the taxpayer's representative was issued a citation for operating the vehicle without a valid motor fuel use tax license, decals, or single trip permit. (Joint Stip. #2; Ex. #1)
3. Special Agent Dickinson prepared a Motor Fuel Use Tax Violation Report ("Report") describing the circumstances related to the issuance of the citation. The Report states that the motor coach has 3 axles, and on the side of the motor coach was the following: "Antennas Direct – Antennas Reinvented – Stronger – Sharper – Better." The Report includes photographs of the outside of the motor coach. (Joint Stip. #3; Ex. #2)
4. The taxpayer's representative provided a document from State Farm Mutual Automobile Insurance Company that shows the vehicle's insurance coverage. Under a section titled "Ordinary use of vehicle" the document states "Motorhome Driven 7,500 miles or less annually." The document also states that the vehicle insured is a "2005 Prevost."¹ (Ex. #5)
5. The IRS assigned the taxpayer an employer identification number, 27-1486351. (Ex. #6)
6. The taxpayer's representative provided a document titled "SunTrust Recreational Vehicle Installment Note, Disclosure Statement and Security Agreement For Loan Exceeding \$100,000" ("Loan Document"). The vehicle is collateral for the loan. The document includes the following under a section titled "My Use of the Collateral Vehicle":

¹ The parties stipulated that the vehicle in question is a 2006 Prevost, yet the insurance document indicates that the insured vehicle is a 2005 Prevost. No explanation was given for this discrepancy. I will assume, for purposes of this recommendation, that the insurance document contained a scrivener's error.

I will use the Collateral Vehicle only for personal, family or household purposes. I will not occupy the Collateral Vehicle, nor will I permit any other person to occupy the Collateral Vehicle, as my or their residence or primary dwelling place. I will not sell the Collateral Vehicle, use it for any commercial purpose, pledge it as security for another loan, give it away, lease it or otherwise use it for other than personal use without your written permission. I will not use the Collateral Vehicle to carry passengers for hire, permit its use for any illegal purpose(s) or let anyone seize it....(Ex. #7, pp. 1-2)

7. The taxpayer (i.e., the business), the taxpayer's representative (John Doe) and Jane Doe signed the Loan Document as borrowers. (Ex. #7, pp. 8-9)
8. On September 24, 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 August 23, 2010. (Joint Stip. #4; Ex. #3).

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 (1st Dist. 1991); Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978). To prove its case, a taxpayer must present more than testimony denying the Department's assessment. *Id.* The taxpayer must present sufficient documentary evidence to support its claim. *Id.*; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

In the present case, the Department's *prima facie* case was established when the NTL was admitted into evidence. In response, the taxpayer argues that the vehicle is not a commercial motor vehicle because it is a recreational vehicle. The taxpayer contends that the vehicle was built specifically for recreational purposes and is used by the family of the taxpayer's representative for personal and recreational purposes. The taxpayer states that no commerce or business was being transacted, and the taxpayer did not haul any passengers for hire. The taxpayer claims that the vehicle is labeled as a private coach and not for hire, and the vehicle is

licensed as a recreational vehicle. 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 its claim. *Id.* The documentary evidence that was presented is contradictory. On the one hand, the business owns the vehicle, the business signed the Loan Document, and the business name appears on the side of the vehicle. The stipulations also indicate that the vehicle is a "motor coach." On the other hand, the insurance document indicates that the vehicle is a "Motorhome," and the Loan document indicates that the vehicle is to be used only for personal purposes.

Because the evidence is not clear and the taxpayer bears the burden of proof, it must be found that the taxpayer did not present sufficient evidence to show that the vehicle is a recreational vehicle. 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 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*. (emphasis added; 86 Ill. Admin. Code §500.100).

As previously stated, the evidence indicates that the business owns the vehicle, the business signed the Loan Document, and the business name appears on the side of the vehicle. The taxpayer has failed to meet its burden of showing the vehicle is not used for business purposes.

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

Linda Olivero
Administrative Law Judge

Enter: May 31, 2011