

ST 15-13

Tax Type: Sales Tax

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
OF THE STATE OF ILLINOIS**

v.

**ABC BUSINESS , INC.,
Taxpayer**

**No. XXXX
Account ID XXXX
Letter ID XXXX
Period 11/25/14**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Matthew Crain on behalf of the Illinois Department of Revenue; John Doe, *pro se*, on behalf of ABC Business, Inc.

Synopsis:

On December 24, 2014, the Illinois Department of Revenue ("Department") issued a Notice of Tax Liability for Illinois Motor Fuel Use Tax to ABC Business, Inc. ("taxpayer") for operating a commercial motor vehicle in Illinois "without appropriate credentials (*i.e.*, IFTA license, Illinois Single-Trip Permit, 30-day IFTA temporary permit, required decals"). The taxpayer filed a timely protest of this Notice of Tax Liability, which has resulted in this contested case.

Prior to the convening of an evidentiary hearing, the parties agreed to certain stipulations, which are enumerated below, and further agreed to forego an evidentiary hearing in this case and to allow it to be decided based upon the stipulated record. After considering the evidence included in the record, I recommend that this matter be concluded in favor of the Department. In

support of this recommendation, the following “findings of fact” and “conclusions of law” are made.

Findings of Fact:

I find the facts to be as stipulated between the parties in the “Stipulation of Facts and Motion for Judgment on Filings” received May 27, 2015 (“Stip.”) which are as follows:

1. On November 25, 2014, the taxpayer’s driver, Jack Black, was operating a 2005 blue truck that was registered to the taxpayer in Yellow County, Anystate. Stip. 1; Stip. Exhibit (“Ex.”) 1.
2. On said date, the taxpayer’s driver received a ticket from the Illinois Commerce Commission (“ICC”) Police for failure to display a Motor Fuel Use Tax (“MFUT”) License in violation of 625 ILCS 5/11-1419.02. Stip. 2.
3. On or about November 25, 2014, Officer Gene Green of the ICC Police submitted a Form MFUT-57, Motor Fuel Use Tax Violation Referral to the Illinois Department of Revenue. Stip. 3.
4. On the aforementioned liability date, the taxpayer had an active United States Department of Transportation (“DOT”) license and was registered as operating intrastate only, (Non-HM). Stip. 4.¹
5. On or about December 24, 2014, the Department issued Notice of Tax Liability for Illinois Motor Fuel Use Tax, Letter ID XXXX to the taxpayer. Stip. 5.
6. On or about January 5, 2015, the taxpayer protested said Notice of Tax Liability. Stip. 6.
7. The taxpayer’s protest reflects its position that its driver was traveling from its home state of Anystate to the State of Illinois for cattle feed and that the taxpayer was unaware of

¹ United States Department of Transportation documentation included in the stipulated record indicates that the taxpayer is engaged in the transportation of agricultural products and supplies. Stip. Ex. 3.

Illinois' requirement that operators of commercial vehicles must display an MFUT License pursuant to 625 ILCS 5/11-1419.02. Stip. 7.

8. The taxpayer is exempt from similar requirements while operating in Anystate. Stip. 8.²

9. On January 6, 2015 the State of Anystate issued to the taxpayer a 2-015 IFTA Fuel Tax License. Stip. 9.

Conclusions of Law:

In the instant case, the taxpayer is contesting a penalty imposed under the Motor Fuel Tax Law, 35 ILCS 505/1 *et seq.* The Notice of Tax Liability for Illinois Motor Fuel Use Tax issued by the Department alleges that the taxpayer violated this law by operating a commercial motor vehicle in Illinois without a motor fuel use tax license or, in lieu thereof, either a valid Illinois Single-Trip Permit or a 30-day International Fuel Tax Agreement (“IFTA”) temporary permit, and without required IFTA decals. Stip. Ex. 5a. On November 25, 2014, the taxpayer was issued a citation for violating the Motor Fuel Tax Law pursuant to section 625 ILCS 5/11-1419.02 of the Illinois Vehicle Code, 625 ILCS 5/1-100 *et seq.*, which provides as follows:

- (a) If required by Section 13a.4 of the Motor Fuel Tax Law, every valid motor fuel use tax license, or an authorized reproduction, shall at all times be carried in the cab of the vehicle. The operator shall display the license or reproduction upon demand of a police officer or agent or the Department of Revenue. An operator who fails to display a valid motor fuel use tax license is guilty of a petty offense as provided in Section 13a.6 of the Motor Fuel Tax Law.
625 ILCS 5/11-1419.02

The aforementioned provision indicates that any person failing to display a valid motor fuel use tax license in violation of section 13a.4 of the Illinois Motor Fuel Tax Law (“MFTL”) is guilty of a “petty offense” and subject to penalties pursuant to section 13a.6 of the MFTL. Section 13a.4 of the MFTL provides, in part, as follows:

² The taxpayer's vehicles are used exclusively for farm related transportation. Stip. Ex. 3. From this fact, I deduce that these vehicles are exempt from Anystate motor carrier fuel tax as vehicles “qualified to be registered and used as ...farm truck(s), farm trailer(s), or farm semi-trailer(s) and tractor(s).” Ind. Admin. Code 13-2-2.

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 for an exception for motor carriers holding a Single-Trip Permit. 35 **ILCS** 505/13a.5.

Section 13a.4 of the MFTL also provides that the required motor fuel tax decals shall be displayed in the cab of each vehicle. 35 **ILCS** 505/13a.4. Section 13a.6 of the MFTL states that if a commercial motor vehicle is found operating in Illinois without properly displayed decals or without a valid motor fuel use tax license as required by section 13a.4, without a 30 day IFTA permit or without a Single-Trip Permit, the person required to obtain decals and a license or a permit must pay \$XXXX as a penalty for the first offense and \$XXXX for each subsequent offense. 35 **ILCS** 505/13a.6(b).

Section 21 of the MFTL 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 an amount owed is *prima facie* correct and *prima facie* evidence of the amount due. 35 **ILCS** 505/21. The burden shifts to the taxpayer to prove that the assessment is incorrect once the Department has established its *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991).

In this case, the Department's *prima facie* case was established when the Department's Notice of Tax Liability for Illinois Motor Fuel Use Tax at issue was admitted into evidence. Stip. Ex. 5a. In response, the taxpayer admitted that it did not display the required decals on its vehicles and did not possess any of the required motor fuel use tax licenses or any of the required permits on the day it was cited, but avers that this failure was due to extenuating circumstances, stating as follows:

Our driver was traveling from our home state of Anystate to the State of Illinois for cattle feed and we were not aware that since we are exempt from a fuel tax requirement here in Anystate that we were required to have the same when crossing into Illinois. This is not a routine crossing for us and therefore we were not fully aware.
Stip. Ex. 5b.

The record in this case indicates that the taxpayer is domiciled in Anystate and that the vehicle that was ticketed is primarily used in that state. *Id.* It indicates that the taxpayer is engaged in transporting livestock, and agricultural products and supplies in Anystate and is registered with the U.S. Department of Transportation to operate exclusively in that state. Stip. Ex. 3. From this evidence, I deduce that the taxpayer operated in Anystate and only occasionally sent vehicles outside of this state. As noted above, the taxpayer states that the use of the vehicle that was cited for not having or displaying proper credentials resulted from the taxpayer's lack of familiarity with the differences between the law in the taxpayer's home state, Anystate, where it was not required to have an IFTA motor fuel tax license and other credentials, and Illinois, where such a license and credentials are required.

I deduce from the record that the taxpayer was exempt from Anystate motor carrier fuel tax pursuant to Anystate Administrative Code 13-2-2, which exempts vehicles that are "qualified to be registered and used as ... farm truck(s), farm trailer(s), or farm semi-trailer(s) and tractor(s)" See DOT records included as Stipulation Exhibit 3 indicating that the taxpayer is engaged in the transportation of agricultural products and supplies, activities falling squarely within the exemption prescribed by the Anystate Administrative Code, as noted above.

In evaluating the credibility of the taxpayer's explanation for not having and displaying proper credentials, I note that the Anystate IFTA Information Handbook (SP 273/02.05, 10/1/11), which is available on the Anystate Department of Revenue's website (at in.gov/dor), explicitly states that a license is needed whenever farm vehicles that are exempt from IFTA

compliance in Anystate travel outside of that state. International Fuel Tax Agreement (IFTA) Anystate Handbook, SP 273/02-05, p. 5 (“Farm registered vehicles need an IFTA license only if they are traveling out of Anystate.”). While one can understand why an Anystate taxpayer might not know the law in Illinois, the record contains no explanation why this notification to Anystate taxpayers was insufficient to alert the taxpayer of the need for an IFTA license and credentials for its vehicles traveling outside of Anystate to Illinois. For this reason I find that the taxpayer either knew or should have known of this requirement.

Moreover, there is no exception in the MFTL that provides for mitigation or waiver of the fine at issue based upon extenuating circumstances whether or not they are within the taxpayer’s control. The MFTL provides that no motor carrier shall operate without first securing appropriate credentials. Nothing in the MFTL allows for an abatement of the penalty for not possessing or displaying proper credentials when operating a commercial vehicle in Illinois. Accordingly, the law provides no legal basis for abrogating the penalty that has been imposed in the instant case.

WHEREFORE, for the reasons indicated above, it is recommended that the Notice of Tax Liability for Illinois Motor Fuel Use Tax assessing a penalty for failure to possess and display proper credentials at issue in this case be affirmed in its entirety.

Ted Sherrod
Administrative Law Judge

Date: August 10, 2015