

MF 08-6

Tax Type: Motor Fuel Use Tax

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

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

ABC CONSTRUCTION, INC., (and)
XYZ ENTERPRISES, INC.,
TAXPAYERS

) No. 08-ST 0000 (ABC) and

) No. 08-ST-0000 (XYZ)

)

) NTL 00-000000 0 (ABC)

) Acc. No. 00-00000

) NTL 00-000000 0 (XYZ)

) Acc. No. 00-00000

) Kenneth Galvin

) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Gary Stutland, Special Assistant Attorney General, for The Department of Revenue of the State of Illinois; Mr. John Doe, *pro se*, for ABC Construction, Inc. and XYZ Enterprises, Inc.

Synopsis:

On January 2, 2008, The Illinois Department of Revenue (hereinafter “Department”) issued a Notice of Penalty for Dyed Diesel Fuel Violation (“Notice”) to ABC Construction Co, Inc., NTL No. 00-000000 0 and to XYZ Enterprises, Inc., NTL No. 00-000000 0. The Notices alleged that the taxpayers were the operators of licensed motor vehicles that had dyed diesel fuel within their ordinary attached fuel tanks. Mr. Jim Doe, Vice-President of ABC and XYZ, protested both Notices and requested an evidentiary hearing, The evidentiary hearing was held on May 8, 2008 with Mr. Kevin Pannier and Mr. Jason Key, criminal investigators, testifying for the Department and Mr. Smith and Mr. Jones, testifying for ABC and XYZ. Mr. Doe requested that the two

Notices be tried in one proceeding. Tr. p. 4. After reviewing the record, it is recommended that both penalties be upheld.

Findings of Fact:

1. On December 20, 2007, Special Agent, Kevin Pannier, made a dyed diesel fuel inspection of the vehicles located on the lot of ABC Construction. He found dyed diesel fuel in the passenger side fuel tank of a vehicle owned by ABC Construction. He secured a sample of the fuel. The sample was tested on December 21, 2007 by a Petro Spec Diesel Fuel Dye Analyzer and found to have 5.8 parts per million, with anything over 1 part per million considered a positive test for dyed fuel. Tr. pp. 11-21; Dept. Ex. No. 1.

2. On January 2, 2008, the Department issued a Notice of Penalty for Dyed Diesel Fuel Violation to ABC Construction, Account No. 00-00000, NTL No. 00-000000 0, in the amount of \$2,500. The Notice was admitted into evidence under the certification of the Director of the Department. Dept. Ex. No. 1.

3. On December 20, 2007, Special Agent, Jason Key, made a dyed diesel fuel inspection of the vehicles located on the lot of ABC Construction. He found dyed diesel fuel in the passenger side fuel tank of a vehicle owned by XYZ Enterprises, Inc. He secured a sample of the fuel. The sample was tested on December 21, 2007 by a Petro Spec Diesel Fuel Dye Analyzer and found to have 6.4 parts per million, with anything over 1 part per million considered a positive test for dyed fuel. Tr. pp. 24-30; Dept. Ex. No. 2.

4. On January 2, 2008, the Department issued a Notice of Penalty for Dyed Diesel Fuel Violation to XYZ Enterprises, Account No. 00-00000, NTL No. 00-000000

0, in the amount of \$2,500. The Notice was admitted into evidence under the certification of the Director of the Department. Dept. Ex. No. 2.

Conclusions Of Law:

Paragraph 15 of section 15 of the Motor Fuel Tax Act (“Act”) (35 ILCS 505/1 *et seq.*), provides in part as follows:

“15. 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
Second and each occurrence thereafter.....\$5,000

(35 ILCS 505/15). Mr. Doe argued that the penalty should not be imposed because the vehicles at issue were being used for snow removal purposes and Mr. Smith “just grabbed a fuel tank and filled the trucks up. It was just an honest mistake.” Tr. p. 7. Mr. Smith testified that he filled the fuel tanks from labeled pumps, but that the pumps were covered with snow. Tr. pp. 33-34. Mr. Smith testified that he believed that this was the first time that he had filled the vehicles at issue. Tr. p. 37.

The circumstances in this case may be unfortunate, but the statute does not have a provision for abating the penalty for reasonable cause. The statute simply imposes the penalty if dyed fuel is found in the tank of a vehicle required to be registered for highway purposes. Although putting the dyed fuel into the tanks may have been an “honest mistake,” there is no basis, under the statute, for abating the penalty. The penalty in this case must therefore be upheld, and it is my recommendation that NTL No. 00-000000 0 and 00-000000 0 be finalized as issued.

Kenneth Galvin
Administrative Law Judge

July 3, 2008