

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16419
[Redacted]	)	
Petitioner.	)	DECISION
	)	
_____	)	

On February 20, 2002, the Revenue Operations Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (the taxpayer) denying a refund of transfer fees claimed by the Petitioner for reporting periods April, 1999 through September, 1999 in the total amount of \$8,769.60

On March 18, 2002, the Petitioner filed a timely protest and petition for redetermination. Numerous other taxpayers, all represented by the same attorney (who does not represent this taxpayer), filed refund claims on the same issue and agreed that one of them should proceed as a test case. Because this Petitioner's protest letter referenced the test case taxpayer and its filings, this matter was held in abeyance pending the outcome of the test case.

In the test case, the taxpayer's request for a refund of transfer fee was denied. That taxpayer appealed to district court and the case was dismissed without reaching the merits. Following the dismissal of the test case, a letter dated March 10, 2004, was sent to the Petitioner in this matter. A copy is attached hereto. The letter asked whether the Petitioner wanted an informal conference. The letter further stated that the Tax Commission would issue its decision in this matter if it did not hear from the Petitioner by April 15, 2004.

After the Commission's letter of March 10, 2004, was sent, the test case was reinstated as to one of the plaintiffs originally named therein. The Commission, however, has not heard from the Petitioner and now issues this decision.

The issue presented is whether the Petitioner, who paid the Idaho Petroleum Transfer Fee of one cent per gallon imposed by Idaho Code § 41-4908 prior to its suspension on October 1, 1999, is entitled to any refund of the fee paid for periods before the suspension.

The transfer fee in question funds the Idaho Petroleum Clean Water Trust Fund (Trust Fund). The Trust Fund is essentially a tax supported insurance program designed to fund the cost of environmental clean up in the event of leaks from insured underground petroleum storage tanks. The Manager of the State Insurance Fund administered the Trust Fund. It is regulated by the Idaho Department of Insurance. The transfer fee was paid to the State Tax Commission in conjunction with the report of Idaho motor fuels taxes required by the motor fuels tax law. (Chapter 24, Title 63, Idaho Code.)

As in effect in 1999, the statute provided that steps to suspend the transfer fee be initiated when the unencumbered balance in the Trust Fund reached thirty million dollars. Specifically, Idaho Code §41-4908(10) provided that the Director of the Department of Insurance certify to the Tax Commission when the unencumbered balance in the Trust Fund equaled thirty million dollars. Effective the first day of the second month following the date of such certification, the imposition of the transfer fee was to be suspended.

The Director of the Department of Insurance requires insurers, including the Trust Fund, to file a quarterly statement with the Department each calendar quarter. The statement for the second quarter of 1999 was due on August 13, 1999. It was actually filed on August 12. The statement reported that, for the first time, the Trust Fund's unencumbered balance exceeded thirty million dollars. The exact amount was \$31,166,090.

After reviewing this statement, the Director of the Department of Insurance advised the Chairman of the Tax Commission, by letter dated August 27, 1999, that the Trust Fund's

unencumbered balance had reached the thirty million dollar threshold. Upon receipt of this letter, the Tax Commission suspended enforcement and collection of the transfer fee for periods beginning on and after October 1, 1999, that is, the first day of the second month after receipt of the notice. This action complied with the statute. The statute is clear that the triggering event for suspending the transfer fee is not the unencumbered balance in the Trust Fund reaching thirty million dollars. The triggering mechanism for suspending collection of the transfer fee is the certification by the Director of the Department of Insurance to the Tax Commission that the thirty million dollar figure has been met. This certification is the single, identifiable precise date that provides certainty about the date the fee is to be suspended. The statute does not require suspension of the fee on the date the unencumbered balance reaches thirty million dollars for the very good reason that such a date cannot be determined with any precision. Too many variables are involved. These include the timing of DEQ reports, decisions about when to conduct actuarial analysis, judgments about such an analysis, and the fact that statements to the Director of the Department of Insurance are required only on a quarterly basis. (The Commission notes that should the transfer fee be reimposed, as the statutes require be done if the unencumbered balance of the Trust Fund drops below fifteen million dollars, then there will be a time lag in reimposing the transfer fee after it drops below that amount just as there was a time lag in suspending the fee after it reached thirty million dollars.)

The Tax Commission has a limited role in the Trust Fund program. Its obligations relate to administration, collection, enforcement and distribution of the transfer fee. Relative to determining when the Trust Fund's unencumbered balance reaches thirty million dollars, the Commission's powers and duties do not extend to oversight or supervision of either the

Department of Insurance or the State Insurance Fund. Nevertheless, an explanation of how the Trust Fund was found to exceed thirty million dollars is useful.

As noted above, the Trust Fund is supported by the fuel transfer fee and does not charge a premium for policies issued to insure petroleum storage tanks. The overall reserves required by the Trust Fund to cover the cost of petroleum spill clean-up necessarily include a component of reserves set up to cover potential policies that might be issued to existing uninsured petroleum storage tanks that may later become insured. That component of the reserves is based upon the number of existing but uninsured tanks as reported by the Division of Environmental Quality and is referred to as the “eligible but not insured” (EBNI) reserves.

The Trust Fund’s unencumbered balance exceeded thirty million dollars not because of an over-collection of transfer fees but because of the Actuarial Reserve Analysis as of June 30, 1999, prepared on July 28, 1999, by the actuarial firm of [Redacted] This actuarial analysis determined that the amount of required EBNI reserves should be reduced because the Division of Environmental Quality revised downward its estimate of the number of “eligible but not insured” underground petroleum storage tanks as of the end of the second quarter of 1999. This downward adjustment of the number of EBNI storage tanks resulted in a downward adjustment of the Trust Fund’s required reserves of EBNI tanks. This downward actuarial adjustment of the EBNI reserves resulted in an equal upward adjustment of the unencumbered surplus. This resulted in the unencumbered surplus exceeding thirty million dollars as of the end of the second quarter of 1999 and is reflected in the Trust Fund quarterly statement filed with the Department of Insurance.

Because the statute regarding suspension of the transfer fee was followed, no refund of any amount collected in excess of thirty million is permitted.

There is an additional reason, based in equity, for denying any refund of the transfer fee. Distributors such as the taxpayer in this case typically pass along the transfer fee and other taxes to their purchasers. The distributor, in other words, has been reimbursed for the transfer fee already. Absent a showing by the taxpayer that it did not pass on the cost of the transfer fee to its customers, allowing recovery of any part of the transfer fee now will result only in a windfall to the taxpayer. Those who bore the real economic burden of the transfer fee will not be reimbursed, even if such reimbursement was justified.

WHEREFORE, the Notice of Deficiency Determination dated February 20, 2002, is hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioner receive zero refund of transfer fees.

An explanation of the Petitioner's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.

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