

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 18071
[Redacted])
)
) Petitioner.) DECISION
)
)
)
)
_____)

On March 17, 2004, the Revenue Operations Division (RO) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to the [Redacted] denying a request for refund of Idaho motor fuel tax of \$265,451.43 for the period January 1998 through December 2002. On May 6, 2004, a timely protest and petition for redetermination was filed. An informal hearing was not requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

The petitioner is a part of the U.S. Department of Defense (DoD). It is a branch of the Defense Logistics Agency and is responsible for, among other duties, the procurement of motor fuels used by other branches of the DoD. Between 1998 and 2002, the petitioner contracted with several Idaho licensed motor fuel distributors for the purchase of gasoline and aircraft engine fuel. The fuel was delivered by the distributors to [Redacted], all locations in Idaho. The distributors delivered the fuel, FOB, directly to these locations. The invoices show that Idaho motor fuels tax had been paid on the fuel.

A claim for a refund of the motor fuels tax paid on this fuel was filed on behalf of the petitioner by the Defense Finance and Accounting Service (DFAS), another branch of DoD. It is unclear whether the payment to the distributors for the fuel was issued by the petitioner or by DFAS. The cover letter accompanying the refund claim states:

[Redacted]

In a letter dated May 3, 2005, [Redacted], explained that there were two different types of

contracts with fuel distributors involved in this refund claim.

The first type of contract was for [Redacted] where [Redacted] delivered [Redacted] FOB destination delivery, to storage tanks on the [Redacted]. Ms. [Redacted] claims that [Redacted] is a retailer in this situation because it issued the fuel to another branch of the [Redacted].

[Redacted] The [Redacted] used the fuel in its own vehicles. Ms. [Redacted] claims that the [Redacted] is the retailer because it issued fuel into its own vehicles.

Noting that the legal incidence of Idaho's motor fuel tax has been judicially determined to be on the retailer, the petitioner argues that it is the retailer of fuel it purchased and delivered to consumers. These consumers are other DoD agencies. The petitioner argues that, since it is an instrumentality of the federal government, it is exempt from state taxation.

The petitioner provides no legal citation or authority for the proposition that these separate branches of the DoD are separate legal entities capable of independent contracting. It appears that what really occurred is no more than intergovernmental accounting processes rather than retail sales. Instead, it appears that the Idaho motor fuel distributors sold fuel to the DoD which consumed the fuel. The distributors in these transactions are also the retailers. Therefore, no refund is due to the petitioner.

WHEREFORE, the Notice of Deficiency Determination dated March 17, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

An explanation of [Redacted] right to appeal this decision is enclosed with this decision.

DATED this ___ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, 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]

[Redacted]
