

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

In the Matter of the Protest of	)	
	)	DOCKET NOS. 18368
[Redacted]	)	
Petitioner.	)	DECISION
	)	
	)	

---

On September 8, 2004, the Revenue Operations Division (RO) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] denying a request for refund of Idaho motor fuel taxes of \$467,672.79 for the period February 2002 through June 2003. In the NOD, the amount of the refund denied was correct but the period of the refund claim denied should have been February 2002 through June 2004. On October 6, 2004, a timely protest and petition for redetermination was filed by the attorney [Redacted]. An informal hearing was not held. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

On December 1, 2004, the Fuels Tax Audit Division (FTA) of the Commission issued a NOD to [Redacted] proposing additional Idaho motor fuel tax, penalty, and interest of \$17,848.89 for the periods February and March of 2002. [Redacted] did not protest this NOD, but the Commission will address the NOD in this decision because that NOD was based on the same issues as the refund denial.

On April 13, 2005, the policy specialist sent Mr. [Redacted] a letter asking him if he still wanted a conference as requested in a previous letter. Mr. [Redacted] did not respond to this letter.

[Redacted] is an Idaho [Redacted] engaged in the business of selling [Redacted] within the state of Idaho and is a “licensed distributor” as that term is defined in Idaho Code § 63-

2401(16). [Redacted] operates a retail convenience store [Redacted] within the [Redacted]

At issue is fuel purchased off the [Redacted] by [Redacted] at the [Redacted] Idaho and delivered to its retail operations located on the [Redacted]. [Redacted] sells motor fuel and “other convenience items” at retail and does not limit its customers to only [Redacted]. The question presented in this administrative appeal is whether the State of Idaho can tax [Redacted] purchased by an [Redacted]. Mr. [Redacted] asserts that since the [Redacted] is wholly owned by [Redacted] and since the business is conducted wholly [Redacted], it is exempt from state motor fuels taxation. On the other hand, the RO and FTA staff assert that since the [Redacted] is not itself a member of the [Redacted], it is not immune from the Idaho motor fuels tax.

This case presents a question of first impression in Idaho. Is an [Redacted], organized under the laws of Idaho and doing business exclusively within this state, nonetheless exempt from the Idaho motor fuels tax because it is owned [Redacted]? Neither the Idaho Supreme Court nor the United States Supreme Court has yet to specifically answer this question. However, the U.S. Supreme Court has set out the analytical framework under which the Commission will consider this question. Simply stated, the U.S. Supreme Court requires the following two-step analysis:

[Redacted]

It is undisputed that the business activities of [Redacted] place wholly [Redacted]. Thus, the first issue to be addressed in this protest is whether the Idaho motor fuels tax falls upon the [Redacted]. If so, the motor fuels tax is preempted absent clear congressional authorization. If not, then we must apply the balancing of interests test.

[Redacted]The Idaho Supreme Court has held that the legal incidence of the Idaho motor fuels tax falls upon the retailer of the motor fuel in Idaho.

[Redacted]was formed in late 1995. Since that time, [Redacted] has filed federal and state partnership income tax returns. The Schedule K-1 of partnership income tax returns for [Redacted]tax years 2002 and 2003 show that [Redacted] are all general partners/limited liability company members of [Redacted] are not members of the [Redacted] [Redacted]Mr. [Redacted] argues that, since [Redacted] is wholly owned by two [Redacted] it enjoys the [Redacted]. In support of this proposition, Mr. [Redacted] stated “In conformance with the recent Ninth Circuit Court opinions in [Redacted], my client [Redacted] would be entitled to a refund of the monies escrowed.”

[Redacted]The Commission relies on Chippewa Trading for the proposition that legal entities owned by Indians are not Indians. In this case, [Redacted] is a separate legal entity created pursuant to Idaho law. It does not enjoy immunity from tax as do tribes and enrolled members of tribes.

As noted above, the Supreme Court in [Redacted] held that “if the legal incidence of the [challenged] tax rests on [Redacted], no categorical bar prevents enforcement of the tax.” [Redacted]. And, “if the balance of federal, state, [Redacted] favor the State, and federal law is not to the contrary, the State may impose its levy.” Id. In the present case, there is no question

that the State of Idaho has a legitimate governmental interest in raising revenue through a tax on motor fuel received within this state. In the state of Idaho, the motor fuel tax is a dedicated fund that is used to support the construction and maintenance of the roads used by all people (both Indians and non-Indians). It is the use of these roads that creates the market for fuel that supports [Redacted]'s business.

Based on the record currently before the Commission, all that is certain is that [Redacted] provides for the livelihood of its members in which two [Redacted]. But this consideration alone is not enough to overcome the state's interests in taxing motor fuel purchased by this [Redacted]. As a result, the Commission finds that the balancing of state, federal, and [Redacted] interests weighs in favor of the state.

WHEREFORE, the Notices of Deficiency Determination dated November 20, 2003, and February 13, 2004, are hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that [Redacted] pay the following tax, penalty, and interest:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2/2002 & 3/2002	\$14,675.50	\$733.78	\$2,987.23	\$18,396.51

Interest is calculated through September 24, 2005, and will continue to accrue at the rate of \$2.41 per day as set forth in Idaho Code § 63-3045(6) until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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]

[Redacted]  
[Redacted]

---