

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16615
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

This is a motor fuels tax refund case. On June 3, 2002, [Redacted] [Redacted] filed an amended claim for motor fuel tax refund in the amount of \$10,012,925.00.¹ The claim was for motor fuel tax paid from November 1980. [Redacted] requested the claim be considered open for motor fuel tax paid after June 3, 2002. The State Tax Commission (Commission) and [Redacted] agreed to hold the claim in abeyance pending the outcome of proceedings in federal court related to Idaho’s motor fuels tax.²

The Commission issued a Notice of Deficiency Determination (NOD) on January 18, 2006. The NOD allowed part of the claimed refund in the amount of \$2,259,798 plus interest of \$768,651.21 for a total of \$3,028,449.21. The rest of the claim for refund was denied. By letter dated January 30, 2006, [Redacted] timely protested the denial of refunds for the period from November 1980 through that part of 1999 for which refund was denied (March 30, 1999.) By letter dated February 22, 2006, [Redacted] requested the Commission issue its decision.

The Commission’s decision must be placed in the context that generated the request for refund. In [Redacted]³ Relying upon this decision, [Redacted] filed for refund of motor fuel taxes. Idaho’s motor fuel tax statutes provide for refunds to distributors but not to retailers. The

¹ The original claim was for \$22,500,000 plus interest. It was asserted in a letter to “Dirk Kempthorne and Idaho State Tax Commission” dated February 25, 2002. It is this date that is used to calculate the three-year statute of limitation period referred to later in this decision.

² See *Coeur d’ Alene Tribe v. Hammond*, 224 F. Supp. 2d 1264 (D. Idaho 2002); appeal, 384 F. 3d 674 (9th Cir 2004), cert. denied 543 U.S. 1187 (2005).

³ The federal cases referred to largely concerned the Idaho Legislature’s 2002 amendment to the motor fuel tax statutes placing the legal incidence of the tax on the distributor.

Commission reads the [Redacted] decision to require that the provisions for refunds to distributors should be understood to cover refunds to retailers as well. The alternatives to this reading are either to deny retailers refunds because there is no statutory authority to give them or administratively to create from whole cloth a refund mechanism for retailers.

With this background, [Redacted] refund claim can be broken down into various parts.

For the period November 1980 through October 1996, [Redacted] refund claim fails for two reasons. First, the period falls outside the three-year limitation period for claims found in Idaho Code § 63-2410(4). Second, the same statute requires certain documentation to support the claim. No documentation for the period has been provided, and the Commission does not have access to the necessary documentation from other sources.

For the period September 1, 1996 through March 30, 1999, [Redacted] claim is denied for several reasons. First, this period falls outside the three-year statutory limitation period. Second, a distributor has filed a claim for refund of the same motor fuels taxes for this period.⁴ Third, there may be an issue concerning adequate documentation. [Redacted] did not provide documentation to support their claim for this period. The Commission, however, did have access to documentation for the distributor's claim for the same period. To the extent, therefore, that [Redacted] claim is for the same amount the distributor is claiming, the Commission had access to documentation. If [Redacted] claim a refund in an amount greater than the distributor's claim, [Redacted] claim fails for this additional amount because [Redacted] did not provide supporting documentation.

For the period April 1, 1999 through March 31, 2002, the Commission's NOD allowed [Redacted] refund in the total amount of \$3,028,449.21. The claim was made within the limitation period and the Commission had access to supporting documentation even though

⁴ The distributor's claim was also denied. The distributor filed an appeal currently pending in state district court.

[Redacted] did not submit any. The amount allowed has already been paid. [Redacted] do not protest this period.

For the period April 1, 2002 forward, [Redacted] did not file a protest. Pursuant to an order entered in federal district court, the Commission maintained the motor fuels tax money for this period in a separate account. At the conclusion of the federal action, this motor tax fuel revenue, plus interest, in the total amount of \$2,282,782.16 was given to [Redacted].

For the reasons given, [Redacted] protest of the NOD denying in part a refund of motor fuels taxes is hereby denied.

WHEREFORE, the Notice of Deficiency Determination dated January 18, 2006, is APPROVED, AFFIRMED, AND MADE FINAL.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, 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.
