

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21575
[Redacted])	
Petitioner.)	DECISION
)	
_____)	

[Redacted], ([Redacted]) (taxpayer), is a limited liability company formed under Idaho law engaging in the distribution and retail sale of [Redacted]. [Redacted] was audited for the period August 1, 2005, through October 31, 2007. A Notice of Deficiency Determination issued on September 30, 2008, asserting motor fuels tax, penalty, and interest, and transfer fee penalty, and interest, in the total amount of \$723,975.50. Through its attorney, [Redacted] timely petitioned for redetermination of the claimed tax deficiency by letter dated November 26, 2008. A hearing rights letter issued on December 8, 2009, advising [Redacted] of the alternatives for redetermining a protested deficiency. Not having received a response, the Tax Commission (Commission) sent another letter to [Redacted] on February 11, 2009, asking how it wished to proceed. [Redacted] did not respond. Yet another letter to [Redacted] was sent on April 14, 2009, requesting specific information and allowing for two months for [Redacted] to review its records. Finally, on October 22, 2009, a final letter was sent to [Redacted] giving it until November 6, 2009, to establish contact or the Commission would issue its decision based on the Notice of Deficiency Determination of September 30, 2008. No response having been received, this decision issues.

The taxpayer raised two arguments disputing its tax liability.

At the time of the audit, [Redacted] asserted it was not liable for either motor fuels tax or transfer fee, on the theory that the LLC was owned by enrolled members of the [Redacted] and

the business operated on the [Redacted] [Redacted]. Generally, without clear Congressional authorization, a state may not impose its tax on a [Redacted] for activities conducted on the [Redacted]. [See, e.g., *McClanahan v. Arizona State Tax Commission*, 441 U.S. 164 (1973).] The taxpayer essentially asserts that the LLC is an [Redacted] because it is owned by [Redacted]. This argument is not compelling. The LLC is a separate legal entity created under Idaho law and, therefore, not an [Redacted], regardless of ownership of the LLC. The Commission recognizes that there is a split of authority on this point but feels the better rule is that corporations formed under state law are not [Redacted]. The basis of “[Redacted]” status is the political relationship between the [Redacted]. Artificial entities formed under state law do not share in this political relationship. [Redacted] owners want the corporate veil pierced in order to gain a benefit, but of course would not want it pierced if doing so would work to their disadvantage. [Redacted], like other individuals, must decide which method of engaging in business suits their needs and accept the tradeoffs involved. In addition, it is not at all clear that the LLC is owned solely by [Redacted]. In the past, the LLC appears to have been owned by enrolled members of the [Redacted]. There is no evidence this has changed. Arguing that an LLC is an “[Redacted]” because it is owned by [Redacted] is much more difficult if the LLC is partly owned by [Redacted].

The second argument disputing liability was raised in the written protest of November 26, 2008. That protest contained the assertion that the “legal basis of this Petition and Objection to the claims of the Tax Commission is that any and all claims regarding past due taxes, for whatever reason, including [Redacted] status of [Redacted] is *res judicata* by virtue of the settlement of [Redacted] County case no. [Redacted]” *Res judicata* does not apply. The settlement of the earlier case, which involved a different tax period, specifically excluded tax

periods not then in issue and further provided that the settlement not be interpreted as a concession or waiver by either party in any future disputes regarding motor fuels tax liability.

The Commission notes there is a general agreement entered into between the state of Idaho and the [Redacted] that changes the analysis after the agreement's effective date. That agreement, dated October 24, 2007, and taking effect on that date, provides that the [Redacted], not the state, will impose motor fuels tax on gasoline and ethanol-blended fuels sold [Redacted]. It further provides that the state of Idaho shall impose motor fuels tax on 85% of all the gallons of diesel, biodiesel, and biodiesel-blended fuels distributed [Redacted]. The agreement also provides that the transfer fee will not be collected from certain entities, [Redacted], and makes this provision retroactive to September 1, 2007. For the period August 1, 2005, through August 31, 2007, the state of Idaho did not impose the transfer fee. The Notice of Deficiency Determination is, therefore, modified to exclude the transfer fee, to adjust the motor fuels tax, penalty and interest on gasoline to exclude deliveries after October 24, 2007, and to further adjust the motor fuels tax, penalty and interest to impose tax on only 85% of the gallons of diesel fuel delivered after October 24, 2007.

WHEREFORE, the Notice of Deficiency Determination dated September 30, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL AS MODIFIED.

It is ordered AND THIS DOES ORDER that [Redacted] pay the following motor fuels tax, penalty and interest:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>SUB-TOTAL</u>
8/1/2005 to 10/31/2007	\$599,183.00	\$29,959.15	\$121,514.66	\$750,656.81

IN ADDITION, it is ordered AND THIS DOES ORDER that [Redacted] pay the following transfer fee, penalty, and interest:

<u>PERIOD</u>	<u>FEE</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>SUB-TOTAL</u>
8/1/2005 to 8/31/2007	\$0	\$0	\$0	\$0

The TOTAL is \$750,656.81. Interest is calculated through December 10, 2009. Total interest accrues at the rate of \$82.08 per day after that date until paid.

DEMAND for immediate payment in the amount of \$750,656.81 is hereby made and given.

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

DATED this _____ day of _____ 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2009, 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.
