

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 26210
Petitioner.)
DECISION
_____)

[Redacted] (applicant) submitted a timely protest of a fuel distributor license application denial dated December 20, 2013, by the Revenue Operations Division of the Idaho State Tax Commission (Commission). The Commission hereby issues its decision based on the information contained in the file.

BACKGROUND

The applicant submitted an application for a fuel distributor license (license) on August 7, 2013. Although the applicant stated that it had sent a complete application, page 4 of the application, the “consent to be sued” authorization, and bond were missing. In the cover letter, the applicant stated it will post the bond when the Commission agrees to issue the license.

The applicant states in the application it will purchase 75,000 gallons of gasoline and 25,000 gallons of diesel directly from a terminal for export from Idaho to two locations in the [Redacted] in [Redacted]. The applicant was advised that Idaho has no terminals in northern Idaho. Fuel for northern Idaho generally comes from the terminal in [Redacted]. The applicant did not respond when asked from which terminal it intended to purchase the Idaho fuel.

The Commission sent a letter dated September 12, 2013, that it intended to deny the application on the grounds that the applicant had a history of non-compliance. As a routine application procedure, surrounding jurisdictions were asked about an applicant’s status in those jurisdictions. At one time, the applicant was related to [Redacted], which is in litigation with

[Redacted] over a fuel tax liability. At the time the letter was sent, there was evidence that the applicant was related to [Redacted] The letter added that the application would be denied if the applicant took no further action prior to November 17, 2013.

On September 27, 2013, the applicant sent a letter stating it intended to protest the Commission's decision. The applicant expressed confusion over the intent to deny its application, since it had never held an Idaho license. On October 7, 2013, the Commission responded with an explanation that non-compliance was not limited to an Idaho license, but denial could be based on non-compliance with another jurisdiction's fuel tax laws.

The applicant asked the Commission to reconsider the intent to deny its application on November 12, 2013. On December 20, 2013, the Commission denied the license application based on:

- 1) The applicant's failure to include page 4 of the application, and
- 2) A letter issued by the [Redacted] dated October 8, 2013, notifying the applicant that it owed fuel taxes for importing special and motor fuel into that state without paying the appropriate tax.

Idaho is prohibited from issuing a distributor license according to Idaho Code Subsection 63-2427A(3)(b) and Subsection 63-2427A(4), respectively. The applicant was instructed to follow the procedure in Idaho Code sections 63-3045 and 63-3045B to protest the decision, since the Commission had no procedure for protesting the denial of an application.

The applicant sent a timely protest letter on February 14, 2014. In the letter it stated that there was no tax due [Redacted] because it was appealing the assessment. It also included a signed page 4 of the application. A hearing rights letter was sent acknowledging a proper protest was received and a hearing was held on April 22, 2014.

At the hearing, the Commission stated that even though the applicant was appealing the [Redacted] assessment, the tax was still due. Since the "consent to be sued" portion of the

application was supplied with the protest, only two things hindered the Commission from issuing a license. A bond had to be secured and the applicant had to either pay the [Redacted] assessment or [Redacted] had to withdraw the assessment. The applicant stated that if the Commission would issue the license, it would withdraw its protest and secure the bond.

The applicant notified the Commission on August 4, 2014, that the [Redacted] Office of Administrative Hearings had issued an initial order denying the [Redacted] assessment. When the Commission contacted [Redacted] for more information, its response was that it had petitioned for a review of the initial order, which was not binding until it was adopted by the Director of the Department of Licensing (Director) as a final order. It expected the Director to issue a decision by mid-November 2014.

According to the procedure outlined in Idaho Code Section 63-3045B, the Commission was required to issue a decision within 180 days following the hearing. Since [Redacted] estimated its Director would not issue a decision on the initial order until mid-November, the Commission would be required to issue a decision while the applicant still owed the [Redacted] assessment. The applicant was asked if it would rather withdraw its protest until the issue with [Redacted] was resolved or if it would like a decision. The Commission received a letter September 8, 2014, requesting a decision.

LAW AND ANALYSIS

The statute regulating the issuance of Idaho fuel distributor licenses is as follows:

63-2427A.DISTRIBUTOR'S LICENSE. (1) It is unlawful for a person to act as a distributor without a license unless the person:

- (a) Only purchases motor fuel on which any tax due under this chapter has previously been imposed upon a licensed distributor; or
- (b) Only purchases dyed fuel upon which the transfer fee imposed in section 41-4909, Idaho Code, has been imposed upon a licensed distributor; or
- (c) Only produces five thousand (5,000) gallons or less of biodiesel in a calendar year for that person's personal consumption.

(2) Application for a license shall be made upon forms furnished and in a manner prescribed by the commission and shall contain information as it deems necessary, and be accompanied by a bond in the amount required in section 63-2428, Idaho Code.

(3) Upon receipt of the application and bond in proper form the commission shall issue the applicant a license to act as a distributor unless the applicant:

(a) Is a person who formerly held a license under the provisions of this chapter, any predecessor statute, under the laws of any other jurisdiction, or under the laws of the United States which license, prior to the time of filing this application, had been revoked for cause within five (5) years from the date of such application; or

(b) Is a person who has outstanding fuel tax liabilities to this state, any other jurisdiction or the United States government; or

(c) Is a person who has been convicted, under the laws of the United States or any state or jurisdiction or subdivision thereof, of fraud, tax evasion, or a violation of the laws governing the reporting and payment of fees or taxes for petroleum products within five (5) years from the date of making such application; or

(d) Is a person who has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of such application; or

(e) Who is not the real party in interest and the real party in interest is a person described in subsection (3)(a), (3)(b), (3)(c) or (3)(d) of this section.

(4) The commission shall not issue a distributor's license to any person until that person has submitted to the commission a consent to be sued in Idaho district court for purposes of the state enforcing any provision of this chapter. The consent shall be submitted in such form and include such information as the commission may by rule require.

(5) Upon approval of the application the distributor's license shall be valid until it is suspended or revoked for cause, for failure to maintain the bond required in section 63-2428, Idaho Code, for failure to file returns required in this chapter, for failure to pay all taxes and fees due with a return required in this chapter, or is otherwise canceled.

(6) No distributor's license shall be transferable.

(7) The commission shall furnish each licensed distributor with a list of all distributors licensed pursuant to this section. The list shall be supplemented by the commission from time to time to reflect additions and deletions.

(Emphasis added)

There are several steps in the procedure of issuing a license. First, the applicant must submit an application and bond in proper form. The applicant has never submitted a bond. The documents in the file imply that Commission staff have either told the applicant to wait or otherwise allowed the applicant to wait until just before the license was to be issued before

receiving the bond. Whatever the procedure, it is clear that no license can be issued without the required bond.

The applicant must also meet additional requirements. Part of the application is Page 4 of the application, or the “consent to be sued” authorization. Since this was not included when originally submitted, the application was never complete, therefore it was never submitted in proper form. Among other restrictions, the applicant must not owe a fuel tax liability in another jurisdiction. It was issued an assessment by [Redacted].

CONCLUSION

The applicant was notified in the license denial letter of December 20, 2013, that the application was not received in proper form and the Commission was notified that the applicant had received an assessment from another jurisdiction ([Redacted]). The application was completed when the applicant sent Page 4 of the application with its protest. At the hearing, the applicant again promised to secure a bond if the license would be issued.

The major impediment appears to be the [Redacted] assessment. The Commission cannot promise to issue a license if the applicant will promise to secure a bond. The Commission cannot issue a license to the applicant because it has not paid the [Redacted] assessment and has not secured a bond.

Therefore, the request by the applicant for an Idaho fuel distributor license is denied. An application and bond may be submitted when the applicant meets the requirements of Idaho Code Section 63-2427A.

An explanation of the applicant’s right to appeal this decision is enclosed.

DATED this _____ day of _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.
