

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-972-500-992
[Redacted])	
,)	
)	
Petitioner.)	DECISION
_____)	

This case arises from a timely protest of a State Tax Commission (Commission) denial of a motor fuels tax refund claim and a proposed refund of use tax imposed by the sales tax statute for taxable years 2013 and 2014. The Commission finds the original audit a fair representation based on the information in the file, including additional information provided during the appeal proceedings.

BACKGROUND

When a licensed motor fuel distributor first receives motor fuel, tax is due. Consumers, who purchase motor fuels subject to the motor fuels tax and consume them in one of several nontaxable uses, may claim a refund of the motor fuels tax previously paid by the distributor. When the motor fuels tax is refunded, the sales tax exemption granted by Idaho Code § 63-3622C no longer applies and the use tax imposed by Idaho Sales Tax Code § 63-3621 is due on the cost of the motor fuel, less the state and federal fuel tax. The use tax imposed by the sales tax statute does not apply if the consumer qualifies for another sales tax exemption.

Claims for motor fuels tax refunds are made by filing an Idaho Fuel Use Report, Form 75. Since the motor fuels tax is paid by the distributor on a per gallon basis, the refund claim must be based on records showing the tax-paid gallons purchased and identifying those gallons consumed in a nontaxable use. The Commission is authorized by Idaho Code §§ 63-2410 and 63-2434 to examine the claimant's books and records to validate the gallons consumed in a

nontaxable manner that support the refunds claimed. If the use tax imposed by the sales tax statute is also due, it may be paid on the same form by reducing the refund due.

[Redacted] (claimant) claimed motor fuels tax refunds for tax years 2013 and 2014. The claimant reduced its motor fuels tax refund claim by the amount due for the use tax imposed by the sales tax statute. A routine audit was scheduled to review the claimant's records to validate the motor fuels tax refund claims. The auditor found the majority of the gasoline receipts were incomplete and they did not list the number of gallons purchased, the fuel type, nor did they state motor fuels tax was paid. These records were insufficient to support all of the gasoline tax refunds claimed. Diesel receipts were also reviewed and found to be sufficient to support the diesel tax refund claims. Because the gasoline records did not comply with recordkeeping requirements, the auditor issued a Notice of Deficiency Determination (NODD) on March 25, 2016, assessing motor fuels tax, penalty, and interest in the total amount of \$1,940.64. Because the auditor denied the motor fuels tax refund claims, the motor fuel is no longer subject to the use tax imposed by the sales tax statute. The assessment was reduced by a refund of the use tax imposed by the sales tax statute and interest totaling \$1,319.48. The net tax, penalty, and interest remaining are \$621.16.

The claimant filed a timely protest claiming that:

1. The convenience store where the gasoline was purchased does not issue credit card receipts that list the gallons purchased.
2. The tax-paid gasoline gallons for which nontaxable use was claimed were computed based on engine hours instead of using the gallons reported on the receipt and this method was accepted for two previous audits.
3. Financial statements prepared by a certified public accountant supported the gallons claimed.

The file was referred to the Legal/Tax Policy Division for administrative review. The claimant was sent a letter explaining the methods available for redetermining a protested NODD. A hearing was held with the claimant and the tax policy specialist on June 3, 2016. The appeal procedure, record requirements, and audit findings were discussed. Additional records were requested and received from the claimant the following week.

PERTINENT LAW

Final consumers of motor fuel may claim a refund of the motor fuels tax when the motor fuel is purchased with the motor fuels tax included in its sales price then consumed by them in a nontaxable manner. Certain records must be retained to substantiate the refunds claimed. Refunds of motor fuels tax may be offset by the use tax imposed by Idaho Sales Tax Code § 63-3621.

Refunds of taxes included in the price of motor fuel are and the use tax imposed by the sales tax statute may be applied to the motor fuel tax refund in accordance with Idaho Code §§ 63-2410 and 63-2423, for gasoline and diesel, respectively. These sections state in pertinent part:

63-2410. REFUND OF GASOLINE TAX PROCEDURE.

...(5) (a) All claims for refund of gasoline taxes arising under subsection (1), (2) or (3)(b) of this section may be filed separately or in conjunction with the claimant's income tax return due pursuant to chapter 30, title 63, Idaho Code. When filed in conjunction with the income tax return, the refund will be a refundable credit to income tax. The gasoline tax refund claimed must be for tax paid on gasoline actually purchased during the taxable year to which the income tax return relates. **The gasoline tax refund due will be offset against any other taxes, penalties or interest due before any balance is refunded by the commission to the claimant.** Subject to a limitation as to the amount of refund to be claimed as the commission may provide by rule, refund claims may be submitted and paid for any period not greater than one (1) year or less than one (1) month.

...(6) (a) Should the commission find that the claim contains errors, it may correct the claim and approve it as corrected, or the commission may require the claimant to file an amended claim. The commission may require any person who makes a claim for refund to furnish a statement under oath, giving his occupation, description of the machine or equipment in which the gasoline was used, the place where used and any other

information as the commission may require. If the commission determines that any claim has been fraudulently presented, or is supported by an invoice or invoices fraudulently made or altered, or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the commission may reject the claim in full. If the claim is rejected, the commission may suspend the claimant's right to any refund for purchases made during a period not to exceed one (1) year beginning with the date the rejected claim was filed, and it shall take all other action deemed appropriate.

(b) **The commission has authority, in order to establish the validity of any claim, to examine the books and records of the claimant for that purpose**, and failure of the claimant to accede to the demand for the examination may constitute a waiver of all rights to the refund claimed.

63-2423. CREDITS AND REFUNDS TO CONSUMERS.

...(3) **Refunds authorized in this section shall be claimed in the same manner as applies to refunds of gasoline tax under section 63-2410, Idaho Code**, and shall be subject to interest computed pursuant to subsection (5) of that section. (*Emphasis added*).

The records a seller of motor fuel is required to supply to its customers and the records a customer is required to provide for review when claiming a motor fuels tax refund are the same. The seller must provide records in accordance with Motor Fuels Tax Administrative Rule 150 (IDAPA 35.0105.150) and the purchaser must provide records in accordance with Motor Fuels Tax Administrative Rule 270 (IDAPA 35.0105.270):

150. Documentation Required (Rule 150). Section 63-2429, Idaho Code.

01. Retail Sales Invoices for Delivered, Bulk Plant, and Station Sales. Any distributor who sells motor fuels and other petroleum products in this state must issue an original invoice to the purchaser; provided, however, that when sales are accounted for on a monthly basis the invoices may be issued to the purchaser at the time of billing. **All sales invoices (including a credit card receipt used as a sales invoice) for motor fuels and other petroleum products sold at retail stations**, bulk plants, or delivered to the customer's location must contain the following: (4-11-06)

- a. A preprinted identification number, except when invoices are automatically assigned a unique identification number by a computer or similar machine when issued;** (4-11-06)
- b. Name and address of the distributor;** (7-1-98)
- c. Name of the purchaser;** (7-1-98)
- d. Date of sale or delivery;** (7-1-98)
- e. Type of fuel;** (7-1-98)
- f. Gallons invoiced - reported as required in Section 120 of these rules;** (7-1-98)

g. Price per gallon and total amount charged. When taxable motor fuels products are sold, at least one (1) of the following must be used to establish that the Idaho state fuel tax has been charged: (7-1-98)

i. The amount of Idaho state fuels tax; (7-1-98)

ii. The rate of Idaho state fuels tax; or (7-1-98)

iii. A statement that the Idaho state fuels tax is included in the price. (7-1-98)

h. Delivered sales invoices must also contain the purchaser's address along with the Origin and Destination of the motor fuels and other petroleum products. (7-1-98)

i. The sales invoice shall contain double-faced carbons on the original of the first copy, unless invoices are automatically prepared by a computer or similar machine when issued. (7-1-98)

02. Correcting Sales Invoice Errors. When an original invoice is issued containing incorrect information, it may be canceled by a credit invoice and cross-referenced to all copies of the invoice covering the transaction being corrected. If a second sales invoice is issued, it shall show the date and serial number of the original invoice and that the second invoice is in replacement or correction thereof. (7-1-98)

03. Documentation Is Required. Failure to include all the above documentation will result in an invalid sales invoice for a tax-paid fuel claim by the distributor's customer. (7-1-98)

270. Refund Claims -- Documentation (Rule 270).

01. Refunds to Consumers. Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, **must retain in his records the original invoices from the seller, showing the number of gallons purchased.** All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or a double-faced carbon must be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. Each invoice must contain or show the following, in addition to the requirements outlined above: (4-11-06)

a. A preprinted identification number; (4-11-06)

b. Name and address of seller; (7-1-98)

c. Name of purchaser; (7-1-98)

d. Date of delivery; (7-1-98)

e. Type of motor fuel; (7-1-98)

f. Gallons invoiced; (7-1-98)

g. Price per gallon; (7-1-98)

h. At least one (1) of the following to establish that tax has been charged: (7-1-98)

i. The amount of Idaho state fuels tax; (7-1-98)

ii. The rate of Idaho state fuels tax; or (7-1-98)

iii. A statement that the Idaho state fuels tax is included in the price. (7-1-98)

02. Indian-Owned Retail Outlet. Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax

and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules. (4-2-08)

03. Corrected Invoices. No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided. (3-20-14)

04. Invoice Retention. Original, altered, or corrected invoices required by this rule shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (3-20-14)

05. Refund Documents. An original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate is provided to the customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document. (3-20-14)

06. Records Required for Motor Fuels Tax Refunds. Each claimant shall maintain records that are sufficient to prove the accuracy of the fuels tax refund claim. Such records shall include all motor fuels receipts, the gallons of tax-paid fuel used in each type of equipment, both taxable and nontaxable, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the tax-paid fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund. (4-11-06)

(Emphasis added).

DISCUSSION AND ANALYSIS

The Motor Fuels Tax Administrative Rules 150 and 270 describe the records required to support refunds to consumers. In addition, Rule 150 states that a credit card receipt, if issued in lieu of a sales invoice, must contain the same information required on a sales invoice. Rule 270 states that the consumer must maintain sufficient records to support their refunds claimed. If records are not maintained, the claimant waives the right to the refund.

In the present case, the auditor determined that the claimant's gasoline receipts did not meet the requirements of Rules 150 or 270, because they did not show the number of gallons purchased, the fuel type, and state motor fuels tax was paid. The claimant acknowledged that the

credit card receipts did not include the elements required by Rules 150 and 270, but claimed the method used to determine the gallons was approved in two previous audits done by the Commission.

This is the third audit of motor fuels tax refunds claimed by the claimant. The first audit was for the taxable years 1996, 1997, and 1998. No auditor's notes were found for the first audit and the apparent audit result was no change to the amount of the motor fuels tax refund claimed. The auditor's contact log from the first audit notes that recordkeeping requirements were discussed.

The audit period for the second audit was for the taxable years 2005, 2006, and 2007. The auditor's notes from this audit states that the claimant maintained fuel purchase records, however "a majority of the records did not have the required information that is needed to verify a fuels tax refund claim." The auditor's notes also stated that the claimant "should ensure that receipts obtained in the future contain the necessary information to substantiate any refund request."

During the hearing the auditor's notes from the previous audit were discussed. The claimant acknowledged that during the second audit he was informed of the recordkeeping requirements, but felt that his method of recordkeeping was "validated" due to the acceptance of inadequate receipts from previous audits.

The claimant said that the auditor would not look at other records that he had. The tax policy specialist told the claimant that he would look at any records the claimant wanted to provide. He assured the claimant that if the additional records met the requirements for a valid receipt, they would be allowed as credit for refund. After the hearing the claimant provided a handwritten log of fuel purchases he used to compute his nontaxable use. He also requested the convenience store manager, where the gasoline was purchased, send a letter to confirm the credit

card receipts were the only receipts provided by the store. The letter also confirmed that the retailer's receipts did not meet the requirements of Rule 150.

The policy specialist requested a sample of the credit card receipts from the auditor. Neither the fuel purchase log provided by the claimant nor the credit card receipts provided by the auditor qualified as valid fuel sales invoices.

CONCLUSION

The claimant did not provide records that qualified as valid sales invoices or credit card receipts that could be accepted as a replacement for valid sales invoices. By rule, the gasoline tax refund claims did not meet the recordkeeping requirements. The Commission finds the denial of the motor fuels tax refund claim and a proposed refund of use tax imposed by the sales tax statute for taxable years 2013 and 2014 a fair representation. THEREFORE, the Notice dated March 25, 2016, and directed to **[Redacted]** is AFFIRMED by this decision.

IT IS ORDERED that the claimant pay the following amount of tax, penalty, and interest:

	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
FUELS TAX	\$1,740.50	\$87.03	\$143.16	\$1,970.69
USE TAX	(\$1,238.96)	\$0.00	(\$101.91)	<u>(\$1,340.87)</u>
			TOTAL DUE	<u>\$629.82</u>

Interest is calculated through October 31, 2016, and will continue to accrue until the entire liability has been paid.

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

DATED this _____ day of _____ 2016.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2016, 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.
