

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

In the Matter of the Protest of

**[Redacted]**

Petitioner.

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DOCKET NO. 1-714-409-472

DECISION

On March 28, 2016, the staff of the Fuels Tax and Registration Fee Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to **[Redacted]** (Petitioner), proposing fuels tax, use tax, penalty, and interest for the period January 1, 2012, through December 31, 2014, in the total amount of \$2,729.35.

On May 31, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. Petitioner provided additional documentation for the Bureau to review, resulting in a reduction of the Notice. Petitioner paid this amount in full, but did not withdraw its petition for redetermination of the Notice.

On August 3, 2016, Petitioner was contacted to determine how it would like to proceed. At that time, Petitioner requested additional time to decide if it wanted to withdraw the petition for redetermination or to proceed with an informal hearing. To that end, the Commission mailed a hearing rights letter and a protest withdrawal statement.

On October 11, 2016, Petitioner was contacted again, at which time Petitioner asserted that it did not want to proceed with the administrative appeals process and agreed to mail back the withdrawal of the petition for redetermination. To date, this has not been received.

The Commission is fully advised of the contents of the audit file and hereby issues its decision to uphold the revised Notice.

## **Background and Audit Findings**

Petitioner, a water well contractor located in [Redacted] Idaho, filed an Idaho Tax Form 75, Idaho Fuels Tax Refund Worksheets, for the tax years 2012 and 2014 with the income tax returns for the associated years. On the Form 75 filings, Petitioner asserted that it had used undyed diesel in a stationary engine and requested a refund of the fuels tax paid. The refund request was processed and a refund was issued for the amount requested by Petitioner.

In January 2016, the Bureau conducted a routine audit of Petitioner's Form 75 filings for 2012 and 2014. During its examination, the Bureau found the following issues associated with the request made by Petitioner:

1. Lack of documentation – Petitioner was not able to substantiate all of the gallons claimed in the Form 75 filings with actual receipts. The Bureau allowed credit for all gallons that could be documented.

2. Gasoline/Undyed Diesel – Gasoline, AV gas, jet fuel, undyed diesel, propane, and natural gas are all fuel types that may be eligible for a refund in the event that they are put to an exempt use and each should be categorized separately on the form. The Bureau found that Petitioner combined both gasoline and undyed diesel when making the request and separated these during its examination.

3. On Road Fuel – Petitioner did not reduce its claim by the on road usage of the fuel consumed by the [Redacted] rig. The Bureau disallowed the portion of the clear diesel fuel used on the road.

4. Use Tax – Petitioner did not reduce its claim by the use tax due for the gallons claimed in the refund. The Bureau held the gallons allowed in the refund of fuels tax subject to use tax.

Petitioner protested the Bureau's findings asserting that it had additional records to submit. Petitioner provided additional documentation for the Bureau to review which resulted in a revision to the Notice.

### **Relevant Tax Code and Analysis**

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. If sales tax cannot or is not paid to the vendor, the buyer owes a complementary use tax to the state. Payment of use tax extinguishes the sales tax obligation. Idaho Code §§ 63-3612 and 63-3621.

Motor fuel is tangible personal property, but sales tax and use tax are not due on motor fuel for which motor fuels tax has been paid:

Motor fuels subject to tax. There are exempted from the taxes imposed by this chapter purchases which are subject to the motor fuels tax imposed by chapter 24, title 63, Idaho Code, and purchases upon which motor fuels taxes have actually been paid.

Idaho Code § 63-3622C, excerpted in pertinent part

Motor fuel brought to the state of Idaho is subject to motor fuels tax when it is first received by a motor fuel distributor:

A tax is hereby imposed upon the distributor who receives motor fuel in this state. The legal incidence of the tax imposed under this section is borne by the distributor. The tax becomes due and payable upon receipt of the motor fuel in this state by the distributor unless such tax liability has previously accrued to another distributor pursuant to this section. The tax shall be imposed without regard to whether use is on a governmental basis or otherwise, unless exempted by this chapter.

Idaho Code § 63-2402, excerpted in pertinent part

When the end user fills their tank with gasoline or clear diesel fuel at the pump, the price paid includes the fuels tax paid by the distributor. In the event that the end user uses the fuel in a

non-taxable way, that user can claim a refund of the motor fuels tax previously paid by the distributor:

Any person who shall purchase within any one (1) calendar year fifty (50) gallons or more of gasoline used for the purposes described in this subsection shall be entitled to be refunded the amount of gasoline tax previously paid on that gasoline.

Exempt uses are:

- (a) Operating stationary gasoline engines;
- (b) Propelling equipment or vehicles which are not licensed to be operated on a highway;
- (c) Operating commercial motor boats; and
- (d) Propelling an all-terrain vehicle that is not required to be registered pursuant to chapter 4, title 49, Idaho Code, or chapter 71, title 67, Idaho Code.

Idaho Code § 63-2410(2)

Idaho Tax Form 75, Idaho Fuels Tax Refund Worksheet, is filed by taxpayers to take a credit for motor fuels tax paid upon purchase when the fuel is subsequently used in an exempt capacity. In the event that a refund claim is submitted, the taxpayer has a requirement to maintain specific documentation in support of that claim:

**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.

IDAPA 35.01.05.270.06.

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 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.

## Conclusion

Petitioners was not able to provide documentation to establish the validity of its claim in its entirety. Petitioner's claim contained errors related to the fuel type and failed to take into account the on road use of the equipment it was claiming consumed the fuel in an exempt capacity. Petitioner did not pay a use tax for the fuel it claimed the refund for. The Commission agrees with the Bureau that Petitioner received a refund of an amount that exceeded what should have been allowed. The Commission reviewed the Bureau's corrections to the claim and found them to be appropriate.

On appeal, a deficiency determination issued by the Tax Commission "is presumed to be correct, and the burden is on the taxpayer to show that the Commission's decision is erroneous." *Parker v. Idaho State Tax Comm'n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010); *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The Tax Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission will uphold the revised Notice.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's sales tax and use tax liability for the period January 1, 2012, through December 31, 2014.

The Bureau added interest and penalty to the sales tax and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046.

THEREFORE, the Revised Notice of Deficiency Determination dated March 28, 2016, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL. Payment in full was received from Petitioner on August 3, 2016, and will be applied to the Notice. No demand or further payment will be expected.

<u>TYPE</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Fuels Tax	\$936.75	\$89.30	\$(3.51)	\$1,022.54
Use Tax	\$1,538.64	\$0	\$105.37	<u>\$1,644.01</u>
			TOTAL	\$2,666.55
		Payment 08/03/16		<u>(2,666.55)</u>
		TOTAL DUE		<u>\$0</u>

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 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.

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