

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-377-157-632
<span style="background-color: black; color: red;">[Redacted]</span> ,	)	
	)	
Petitioner.	)	DECISION
	)	

On December 14, 2018, the Fuels Tax and Registration Fee Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (Petitioner), proposing Idaho fuels tax for the period from April 1, 2014 through March 31, 2017, in the amount of \$26,054.78.

On February 14, 2019, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission sent Petitioner hearing rights letters dated March 1, 2019, and April 19, 2019. However, Petitioner has not requested a hearing or provided additional documentation for the Commission’s consideration.

The Commission reviewed the audit file and upholds the Notice for the reasons that follow.

**Background and Audit Findings**

Petitioner is an explosives contractor, located in [Redacted], Idaho, that operates drills and other heavy equipment, primarily used to widen roads and open rock quarries. The majority of Petitioner’s equipment is gasoline powered and is not licensed or required to be licensed for operation on a highway. When Petitioner consumes undyed diesel fuel (fuel) in unlicensed equipment, it is eligible for a motor fuels tax (fuels tax) refund. Once Petitioner claims a fuels tax refund for fuel consumed in unlicensed equipment, the fuel then becomes subject to use tax, unless another exemption applies. To determine Petitioner’s compliance with fuels tax and corresponding use tax laws, the Bureau conducted a routine audit of Petitioner’s business.

During this examination, the Bureau found Petitioner purchased fuel for both exempt and non-exempt purposes in the same transaction. The Bureau also reviewed Petitioner's recordkeeping and was unable to identify any internal controls that separated Petitioner's purchases of nonexempt fuel placed in vehicles from the fuel placed in tanks for potentially exempt uses. Additionally, the Bureau found no records identifying which vehicles or equipment consumed the tank fuel. The Bureau determined no fuels tax exemption applied to the fuel Petitioner consumed in its vehicles.

The Bureau found Petitioner multiplied the total amount of fuel it purchased each year by 60%. Petitioner then reported this amount, on Section V of Form 75, as nontaxable gallons. Petitioner filed Form 75 in conjunction with its corporate income tax returns (Form 41), claiming a refundable credit against the income tax due.

The Bureau also reviewed Section VII of Form 75, labeled Use Tax Due. This Section is used to file and pay use tax on the number of nontaxable gallons Petitioner claimed on Section V of Form 75. The Bureau found Petitioner reported no use tax in this Section.

After finding no records accounting for the actual number of nontaxable gallons consumed in its equipment, the Bureau denied the number of nontaxable gallons Petitioner claimed on Form 75. As a result, the Bureau assessed Petitioner for the total credit claimed against the income tax due. Since the Bureau denied the nontaxable gallons and subsequent credit, the nontaxable gallons were not subject to the corresponding use tax imposed.

### **Petitioner's Protest**

Petitioner disagrees with the Bureau's findings, claiming it keeps records and receipts which can be used to determine the amount of fuel it consumed in vehicles. After calculating the total amount of fuel it consumed in vehicles, Petitioner claims it can determine the fuel it consumed in drilling equipment. Petitioner indicates the actual fuel it consumed in this equipment exceeds the calculation

it used to determine nontaxable gallons for refund purposes. Petitioner claims this calculation is based on industry standards, using 60% of the total gallons it purchases each year. Petitioner asks the Commission to accept this method for calculating nontaxable gallons and further indicates this method is accepted as an internal control by the federal government.

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

Fuels tax is imposed on a distributor when it first receives fuel in Idaho. *See* §63-2402, Idaho Code. The distributor may provide fuel to a retail outlet, or it may act as retailer by selling fuel to the end consumer. When a consumer purchases fuel for nontaxable use, it may claim a fuels tax refund, for the amount of tax that the distributor previously paid on that fuel.

To accomplish this, the consumer may file a fuels tax refund claim separately or in conjunction with its income tax return pursuant to Chapter 30, Title 63, Idaho Code. When Form 75 is filed in conjunction with an income tax return, the refund will be a refundable credit to income tax. The fuels tax refund claimed must be for tax paid on gasoline actually purchased during the taxable year to which the income tax return relates. The refund due will be offset against any other taxes, penalties or interest due before the Commission refunds any balance to the claimant. *See* §63-2410(5)(a), Idaho Code. In this case, Petitioner filed fuels tax refunds on Form 75 in conjunction with Form 41, resulting in a credit that reduced the amount of corporate income tax due.

When fuels tax is refunded, or a credit is claimed, the sales tax exemption previously granted in §63-3622C, Idaho Code, for fuel purchases that are subject to fuels tax, no longer applies. Therefore, the use tax imposed by §63-3621, Idaho Code is then due on the fuel purchased, unless another exemption applies. *See* IDAPA 35.01.05.171. If the fuel is subject to use tax, then the amount of use tax due may be reported on Form 75, reducing the amount of refund or credit

claimed. However, Petitioner reported no use tax on the non-taxable gallons for which it claimed a credit.

In order to establish the validity of any claim, the Commission has the authority to examine the books and records of any claimant for that purpose, and failure of the claimant to consent to the demand for the examination may constitute a waiver of all rights to the refund claimed. *See* §63-2410(6)(b), Idaho Code. The records required for fuels tax refund claims are established in IDAPA 35.01.05.270 (Rule 270). This Rule states in pertinent part,

**03. Records Required-Generally.** A claimant must have fuel purchase records and records showing fuel was placed into the supply tank of vehicles or equipment using the fuel in a nontaxable manner. Fuel purchase records must contain the information required by Rule 150 of these rules. Fuel purchase records must be reissued if altered or corrected.

**04. Records Required-Retail Fuel Purchases.** When claiming a refund of tax for fuel purchased from a retail outlet, a receipt is required. The vehicles or piece of equipment using the fuel must be recorded on the receipt. If claiming refunds for fuel used in more than one vehicle or piece of equipment, make sure all the vehicles and equipment are identified on each receipt. When placing fuel into containers for use in vehicles, pieces of equipment, or commercial motorboats, identify into which the fuel is placed on the receipt. No other records are required if the fuel from the container isn't used in licensed or required to be licensed motor vehicles.

In this case, Petitioner purchased fuel for exempt and nonexempt purposes in the same transaction. Petitioner did not list the vehicle or equipment that used the fuel purchased on each receipt, as required by Rule 270.

Petitioner consumes the fuel it purchases in a variety of ways, which result in various tax implications. When Petitioner consumes fuel in vehicles that are used to drive between job sites, no fuels tax exemption applies. Alternatively, a fuels tax exemption applies when Petitioner consumes fuel in its equipment used for blasting quarries to create rock that its customers ultimately sale at retail. *See* §63-2410, Idaho Code. A fuels tax exemption also applies to the fuel

Petitioner consumes in equipment for road cuts, ditch lines, concrete demolition, and other types of general construction work.

The reporting requirements for fuels subject to use tax are set forth in IDAPA 35.01.05.230 (Rule 230) which states in relevant part,

**02. Lack of Records to Compute Fuel Consumption Rate.** In the event that the motor fuels consumer fails to keep sufficiently detailed records to determine motor fuels consumed by its motor vehicles, the consumption rates found in Subsection 290.01 of these rules shall be presumed to be correct.

**03. Fuel Records.** If the motor fuels consumer fails to keep sufficiently detailed records to determine taxable gallons, all tax-exempt motor fuels purchased will be subject to the fuels tax unless the number of such gallons placed into the supply tank of the licensed or required to be licensed motor vehicle can be determined.

Rather than retaining records to determine the number of taxable gallons used in equipment, Petitioner provided two suggestions for calculating nontaxable gallons. First, Petitioner proposed using the vehicle mileage records and fuel receipts to calculate the fuel consumed in its vehicles. After subtracting the amount of fuel consumed in vehicles from the total fuel purchased, Petitioner indicates it may determine the amount of fuel it consumed in equipment. Petitioner also suggested multiplying the total gallons consumed by 60% to determine the amount of fuel used in its equipment. However, neither of these methods properly accounts for the gallons subject to use tax.

Alternative methods for estimating the nontaxable miles are specifically identified in IDAPA 35.01.05.290 (Rule 290). The applicable portion of Rule 290 states:

**05. Alternate Methods.** A claimant may use an alternate method to determine nontaxable miles or use a presumed MPG to determine fuel use unless they are an IFTA licensee or IRP registrant in any participating jurisdiction. Claimants may estimate using one of the methods below.

**a.** Estimating Nontaxable Miles. Nontaxable miles may be estimated by using maps, contracts, or a State Tax Commission approved trip analysis. Upon request, the claimant must provide the documents supporting the estimation. Maps other than the Official Idaho Highway map miles are estimates.

**b.** Estimating Nontaxable Gallons. Nontaxable gallons may be estimated using presumed MPGs. Upon request, the claimant must provide the tax-paid fuel purchase records supporting the total gallons claimed.

In this case, Petitioner was unable to provide records substantiating the gallons claimed. *See* Rules 270 and 290.

Ultimately, the Commission finds Petitioner likely consumed nontaxable gallons in its equipment; however, Petitioner was required to keep records supporting the gallons consumed in a nontaxable manner. *See* Rules 270 and 290. Since Petitioner did not retain these records, the Commission determined the accuracy of Petitioner's nontaxable gallons could not be verified. Therefore, the Commission finds the Bureau properly denied the nontaxable gallons claimed and assessed Petitioner for the total credit claimed on Form 41, throughout the entire audit period.

### **Conclusion**

On appeal, a deficiency determination issued by the 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) (*citing* *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). To meet this burden, the Commission required Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence to meet this burden. As a result, the Commission upholds the Notice.

Absent information to the contrary, the Commission finds the Notice to be an accurate representation of Petitioner's liability for the period of April 1, 2014, through March 31, 2017.

The Bureau added interest to the fuels tax deficiency. The Commission reviewed this addition, finds it to be appropriate per §63-3045, Idaho Code, and updated interest accordingly. Interest is calculated through November 30, 2019 and will continue to accrue at the rate set forth in §63-3045(6), Idaho Code, until paid. No penalty was assessed.

THEREFORE, the Notice is hereby APPROVED, in accordance with the provisions of this decision, and are AFFIRMED and MADE FINAL.

IT IS ORDERED that Petitioner pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$24,052.01	\$2,951.68	\$27,003.69

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018 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]

[Redacted]

[Redacted]

[Redacted]

Receipt No.

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