

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [REDACTED]) DOCKET NO. 1-991-194-624
 [REDACTED])
)
 _____ Petitioner.) DECISION

On September 28, 2018, the staff of the Fuels Tax & Registration Fee Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [REDACTED] (Petitioner), proposing a use tax refund, motor fuels tax due, penalty, and interest for the period January 1, 2014, through December 31, 2017, in the total amount of \$17,987.85.

On November 20, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission sent hearing rights letters on December 27, 2018 and February 1, 2019. No response was received from Petitioner. Having reviewed the audit file, the protest letter, and applicable Idaho statutes, the Commission hereby upholds the Notice.

BACKGROUND AND AUDIT FINDINGS

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 in 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.

Petitioner operated a business in [REDACTED], Idaho, with five bulk storage fuel tanks at its location. The bulk storage fuel tanks contained gasoline, heating oil, dyed diesel, and undyed diesel. Petitioner claimed motor fuels tax refunds for tax years 2014 through 2017, inclusive, and reduced its motor fuels tax refund claim for each year by the amount due for the use tax imposed by the sales tax statute. The refunds claimed by Petitioner on its 2014-2017 Forms 75 were granted when the returns were filed. A routine audit was scheduled to review Petitioner's records to validate the motor fuels tax refund claims; however, Petitioner advised the Bureau that all documentation related to fuel delivered and consumed within Idaho was destroyed in a hurricane. All of Petitioner's fuel was purchased on account from an Idaho fuel distributor, and the Bureau requested Petitioner obtain copies of the documentation from the distributor. Ultimately, Petitioner did not provide the Bureau with any records related to the fuel claimed as nontaxable. The Bureau held all nontaxable gallons claimed during the audit period as subject to motor fuels tax. The use tax calculated on Petitioner's Forms 75 was credited on the Notice prepared by the Bureau.

PETITIONER'S PROTEST

Petitioner protested the Notice. According to Petitioner, he no longer operates the business

in Idaho, and has no access to the business records. Petitioner now resides in [REDACTED], and asserts all of the documentation in his possession was destroyed when his home flooded during Hurricane Irma in September 2017. Petitioner contends he has requested documentation from the fuel distributor on several occasions, without any response from the distributor.

RELEVANT TAX CODE AND ANALYSIS

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 (2018) and 63-2423 (2015), 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.**

(7) In the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit a duplicate copy of the invoice certified by the vendor, but payment based on the duplicate invoice shall not be made until one (1) year after the date on which the gasoline was purchased.

Id

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 (2014)) and the purchaser must provide records in accordance with Motor Fuels Tax Administrative Rule 270 (IDAPA 35.01.05.270 (2014)), in pertinent part:

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)

* * * *

Id

270. Refund Claims -- Documentation (Rule 270). Sections 63-2410, 63-2421, and 63-2423, Idaho Code.

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).

Id

DISCUSSION AND ANALYSIS

The Motor Fuels Tax Administrative Rules 150 and 270 describe the records required to support refunds to consumers. 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, Petitioner has not provided any documentation to fulfill the requirements of Rules 150 or 270. Without any fuel delivery records, it is impossible to establish the quantity and type of fuel delivered to Petitioner's bulk tanks, let alone determine if the delivered fuel was used in a taxable or non-taxable manner.

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." See *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)). The 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 Notice.

CONCLUSION

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's use tax and fuels tax liability for the period January 1, 2014, through December 31, 2017.

The Bureau added interest and penalty to the fuels tax and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through June 30, 2019, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated September 28, 2018, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$15,886.31	\$925.46	\$1,623.94	\$18,435.71

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 _____, 2019 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:

Receipt No.
