

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:)
)
The proposed cancellation of the Motor)
Fuels distributor's license of)
)
[Taxpayer])

FINAL DECISION
Docket No. 2002-702

INTRODUCTION

This matter was heard before the undersigned Assistant Secretary of Administrative Hearings in Raleigh, North Carolina on November 12, 2002. The hearing was held upon request by the Motor Fuels Tax Division (hereinafter "Division"), seeking cancellation of the motor fuels distributor's license held by [Taxpayer/Licensee] for failure to file a replacement bond or to obtain an additional bond as required under G.S. 105-449.120(9).

By letter dated October 11, 2002, the undersigned Assistant Secretary notified the Taxpayer that the time, date and location of the hearing was 10:00 am on November 12, 2002 in Room 135 of the Revenue Building at 501 North Wilmington Street in Raleigh. Representing the Division at the hearing was JoLisa Ellis, Motor Fuels Tax Auditor, and Christopher E. Allen, Division Counsel. Taxpayer did not attend the hearing, request a postponement, or submit any evidence.

ISSUE

Whether Taxpayer's motor fuels distributor's license should be cancelled pursuant to G.S. 105-449.76 and G.S. 105-449.120.

EVIDENCE

1. Notice of cancellation from [an insurance company].
2. Letter dated October 10, 2002 from the Division notifying Taxpayer that it must submit a replacement bond by October 25, 2002.
3. Letter dated October 30, 2002 from Christopher E. Allen, Division Counsel, to Taxpayer giving notice that the matter was turned over to the Secretary of Revenue for an administrative hearing upon Division's request to cancel distributor's license.

4. Letter dated August 14, 2002 from Eugene J. Cella to Taxpayer/Licensee providing that notice of the time, date, and location for the administrative hearing was 9:00 a.m. on November 12, 2002 in Room 135 of the Revenue Building.
5. Supplier 10 Day Notification from [a corporation] dated October 29, 2002.
6. Supplier 10 Day Notification from [a corporation] dated October 30, 2002.
7. Supplier 10 Day Notification from [a corporation] dated October 31, 2002.
8. Memorandum dated May 16, 2001 from E. Norris Tolson to Eugene J. Cella delegating authority to conduct administrative tax hearings pursuant to G.S. 105-260.1.

FINDINGS OF FACT

Based upon the foregoing evidence, the undersigned makes the following findings of fact:

1. Taxpayer/Licensee was, during all times relevant to this matter, a "distributor" as defined by G.S. 105-449.60(8).
2. Taxpayer/Licensee was licensed as a distributor pursuant to G.S. 449.67 and as a condition of licensure was required to maintain a bond pursuant to G.S. 105-449.72.
3. G.S. 105-449.76 provides that the Secretary may cancel the license of a license holder that commits one or more of the acts specified in G.S. 105-449.120.
4. G.S. 105-449.120(a)(9) mandates that it is unlawful to fail to file a replacement bond or an additional bond as required.
5. Taxpayer/Licensee allowed its bond, underwritten by [an insurance company], to be cancelled effective October 30, 2002.
6. Taxpayer/Licensee continued to accrue tax liability without adequate security in place as required by Part 2, Article 36C of the Motor Fuel Laws of this State.
7. Taxpayer/Licensee failed to appear at the hearing of this matter after receiving notice of the time, date, and location of the hearing.
8. Taxpayer/Licensee failed to present any argument or evidence in opposition to the Division's application to cancel Taxpayer's distributor's license.
9. Taxpayer/Licensee failed to obtain a replacement bond by October 25, 2002 as specified by the Division's letter dated October 10, 2002

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the undersigned makes the following conclusions of law:

1. Taxpayer/Licensee was during all times relevant to the matter herein a distributor as defined by G.S. 105-449.60(8).
2. As a motor fuels distributor, Taxpayer/Licensee was during all times relevant to the matter herein required to maintain a bond in favor of the State of North Carolina, Department of Revenue pursuant to G.S. 105-449.72(a)(2)d.
3. Taxpayer/Licensee allowed its surety, [an insurance company], to cancel its bond in favor of the State of North Carolina, Department of Revenue.
4. Taxpayer/Licensee unlawfully failed to obtain a replacement bond or additional bond in derogation of G.S. 105-449.120(a)(9).
5. Taxpayer's failure to secure an adequate replacement bond or an additional bond constitute acts under G.S. 105-449.76 for which the Secretary may cancel its license
6. Taxpayer/Licensee has presented insufficient evidence to overcome the Division's evidence in support of the cancellation of Taxpayer's license.

CONCLUSION

Taxpayer/Licensee has allowed its surety to cancel the bond in favor of the State of North Carolina, Department of Revenue, and has not obtained a replacement bond as required. Moreover, Taxpayer did not appear at the hearing of this matter and has presented no evidence to refute the contentions of the Division.

WHEREFORE, the undersigned Assistant Secretary of Revenue **HEREBY ALLOWS** the request of the Motor Fuels Tax Division and cancels the motor fuels distributor license held by the Taxpayer/Licensee.

This the 28th day of January, 2003.

Signature _____

Eugene J. Cella
Assistant Secretary of Revenue