

**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. 2003-265

This matter was heard before the undersigned Assistant Secretary of Administrative Hearings in Raleigh, North Carolina on July 31, 2003. 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 June 4, 2003, the undersigned Assistant Secretary notified the Taxpayer that the time, date and location of the hearing was 2:00 p.m. in Room 135 of the Revenue Building at 501 North Wilmington Street in Raleigh. Representing the Division at the hearing was Patricia A. Thompson, Motor Fuels Licensing and Bonds Assistant, 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 for failure to obtain a replacement bond.**

**EVIDENCE**

1. Application for licensed distributor of bulk fuels dated February 1, 2001.
2. Motor Fuels Distributor License issued August 3, 2001 and effective April 1, 2001.
3. Notice of Cancellation of Bond Number 3 42 37 19 received June 25, 2002.
4. Letter dated October 30, 2002, from Patti Thompson to Taxpayer/Licensee containing notification of bonding requirements and a bond form.
5. Letter dated February 3, 2003 from Christopher E. Allen to Taxpayer/Licensee, referring the matter to the Secretary for a hearing to cancel license.
6. Affidavit of Julian W. Fitzgerald, Sr., Division Director, stating that Taxpayer/Licensee has not obtained a replacement bond as required by the State Revenue Act.

7. Letter Mr. Eugene J. Cella to Taxpayer/Licensee scheduling a hearing for July 31, 2003.
8. Letter dated May 16, 2001 from Secretary Tolson to Mr. Eugene J. Cella authorizing Mr. Cella to conduct administrative tax hearings.

### **FINDINGS OF FACT**

Based upon all matters of record, the undersigned Assistant Secretary 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 [a company], to be cancelled effective July 20, 2002.
6. Taxpayer/Licensee failed to obtain a replacement bond by November 30, 2002 as specified by the Division's letter dated October 30, 2002.
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.

### **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 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 31<sup>st</sup> day of July, 2003.

Signature \_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Revenue