

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:)
)
The Denial of Claim for Refund for)
Tax-paid Motor Fuel Used Off-Highway)
For Calendar Year 2002 In the Amount)
Of \$468.32)
)
By)
)
[Taxpayer])

FINAL DECISION
Docket No. 2003-418

This matter was conducted before the undersigned Assistant Secretary for Administrative Hearings, Eugene J. Cella, in Raleigh, North Carolina by written communication at the request of Taxpayer. Taxpayer represented himself, *Pro Se*. Representing the Motor Fuels Tax Division was Christopher E. Allen, General Counsel.

ISSUE

Whether the Division properly denied the refund claim brought by Taxpayer pursuant to G.S. 105-449.107(a) for taxes paid on motor fuel allegedly used off road for calendar year 2002.

EVIDENCE

The following items were introduced into evidence by the Division.

1. Motor Fuels Claim for Refund for tax-paid motor fuel used off-highway (Form Gas-1201) for 2002, copies of fuel purchase receipts and printed adding machine tabulation sheets.
2. Letter dated June 27, 2003 from the Division to Taxpayer.
3. Copy of Taxpayer's 2003 commercial fishing vessel registration and commercial fishing license issued by the State Division of Marine Fisheries.
4. Notice of adjustment in claim for motor fuels tax refund dated August 11, 2003.
5. Letter dated October 6, 2003 from Eugene J. Cella to Taxpayer scheduling an administrative hearing for November 17, 2003.

6. Letter dated November 18, 2003 from Eugene J. Cella to Taxpayer rescheduling the administrative hearing for December 10, 2003 at the request of Taxpayer.
7. Memorandum dated May 16, 2001 by E. Norris Tolson, Secretary of Revenue, delegating to Eugene J. Cella the authority to conduct hearings required or allowed under Chapter 105 of the General Statutes.

The Division submitted a brief for hearing with attached exhibits.

The Taxpayer introduced the following into evidence at the hearing:

- TP-1. Photocopies of fuel purchase receipts.

FINDINGS OF FACT

Based upon the forgoing evidence of record, the Assistant Secretary for Administrative Tax Hearings makes the following findings of fact:

1. Taxpayer applied for a refund for tax-paid motor fuel used off highway pursuant to G.S. § 105-449.107(a) for the calendar year 2002, filing the Motor Fuel Tax Division (hereinafter "Division") Form GAS-1201, together with various receipts reflecting purchases of motor fuel and a printed adding machine tabulation.
2. Initially, the Division rejected the application and requested a copy of Taxpayer's commercial fishing license.
3. Taxpayer tendered copies of his 2003 commercial fishing vessel registration and fishing license issued by the State Division of Marine Fisheries.
4. Taxpayer has not tendered a copy of his 2002 commercial fishing license.
5. The relevant North Carolina Administrative Rules detail specific information that an acceptable invoice must contain to qualify as a valid receipt for refund for off-highway use of motor fuel. (See 17 NCAC 12B .4030)
6. These requirements include the date of purchase, name of purchaser and seller, address of seller, the number of gallons purchased, price per gallon, and the total amount paid.
7. These essential elements must be clearly shown on the receipt.
8. A review of receipts tendered by Taxpayer reveals numerous defects.
9. Some receipts were illegible, while others lacked dates, were otherwise improper or were missing altogether.
10. Other receipts are sequentially numbered, and some have duplicate numbers with different dates and amounts.

11. On August 11, 2003, the Division sent a notice of adjustment in claim for refund specifying deficiencies in the refund claim documentation, reducing the claimed off-highway fuel usage by 2023 gallons.
12. This adjustment resulted in a reduction of the refund by \$468.32.
13. Taxpayer objected to the adjustment, and because this matter remains unresolved, it was referred to the Assistant Secretary for Administrative Hearings.

CONCLUSIONS OF LAW

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

1. N.C.G.S. §105-449.107(a) provides for an annual refund for taxpayers that use tax paid fuel off-road.
2. The Taxpayer herein has failed to tender to the Division invoices containing the information required by both the State Revenue Act and the relevant administrative rules to substantiate his refund claim.
3. Taxpayer has not demonstrated compliance with the necessary requirements for refunds of taxes paid on motor fuel that he asserts was used in his commercial fishing operation.
4. Taxpayer has not established his entitlement to refunds received from the Division during the relevant refund period.
5. The adjustment made by the Motor Fuels Tax Division must therefore be affirmed in all respects and the claim for refund must be denied.

DECISION

WHEREFORE, based upon the above findings of fact and conclusions of law, the undersigned Assistant Secretary of Revenue **HEREBY AFFIRMS** the Division's denial of Taxpayer's claim for refund.

This the 12st day of March, 2004.

Signature _____

Eugene J. Cella
Assistant Secretary of Revenue